

CA24W

Xc20

-73421



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

7200

1

#67

Ontario Legislative Assembly Select
Committee on the New Ontario
Hydro Building (40)

Hearings v. 11. Aug. 30 - Sept 6, 1973

Oct 11

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, August 30, 1973.

1966-1998



7871-2221

Aug. 30/78
2.45-2.50 p.m.
B.A.

H-1966-1

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS.

The committee met at 2.45 o'clock p.m., in the members' board room.

Mr. Chairman: Ladies and Gentlemen, I call the meeting to order, and in doing so I apologize for the fact that we are behind time but I think we have had a very useful and helpful morning, and so I think the time of the committee has been well spent. Mr. Genest.

Mr. Genest: Mr. Chairman, at the first opportunity, I would like to say something to the committee about the remark of mine which ~~it~~ escaped me in anger yesterday in the course of Mr. Dow's evidence. I was exercised about the repetition by the witness of what I considered to be hearsay evidence, not helpful in any way to the deliberations of the committee and I am ~~am~~ afraid, Mr. Chairman, that I lost my temper, and I used the word "McCarthyism". I don't withdraw from the position ^{that} I took ~~that~~ it was not necessary to bring that evidence out, but I very much regret the use of the term which, in the coolness of after the event, I realized was uncalled for. I wish to apologize to the committee and to its counsel because I recognize that the ~~whole~~ committee and its counsel was trying to do what, according to their lights, is a proper job and that term, I think, was inappropriate and uncalled for. I wish to withdraw it and apologize to the committee for its use.

Mr. Walker: I thought that referred to Mr. Finlayson's firm.

Mr. Chairman: Thank you, Mr. Genest, your apology is accepted. I am so used to some of these remarks now that it didn't leave the impression on me that it may have left on some of the others but I appreciate the fullness of your apology, and thank you for it, sir. Mr. Shibley.

Aug. 30/73
2.45-2.50p.m.
B.A.

H-1966-2

Mr. Shibley: Mr. McCallum, please.

Mr. Henderson: I thought you were there.....

Mr. McCallum: No, he's fixing his socks, and when he gets those socks fixed I am sure he is going to swear me.

Mr. Chairman: Mr. McCallum, welcome. I'm sorry, I didn't see you standing there and I was fixing my socks, you are quite right. I think we should all ~~all~~ pull up our socks occasionally.

JAMES F. McCALLUM, Sworn.

Mr. Shibley: Mr. McCallum, what is your occupation?

Mr. McCallum: I am a lawyer.

Mr. Shibley: And with what firm are you associated?

Mr. McCallum: Harries, Houser, ~~W~~ Brown and McCallum.

Mr. Shibley: Is Elmer Houser one of your partners?

Mr. McCallum: Yes, he is.

Mr. Shibley: And did you and he have to do with the documentation of the agreements ^{SE} ~~inter~~ ~~the~~ Canada Square and Ontario Hydro referable to the head office building?

Mr. McCallum: Yes, we did. I think that in the actual drafting and the discussions with the lawyers for Canada Square, he had much more to do with it than I did, but I certainly assume ultimate responsibility for the documents that were sent to Hydro for their signature.

Mr. Shibley: Now, I know that you are on short notice of the intention to call you today. I would like you to assist this committee, first, by taking the contract documents themselves that are exhibit 2 in these proceedings, and giving the committee the benefit of the summary outline of the basic ~~of~~ terms of the agreement and their import.

Mr. McCallum: ~~Thank you, Mr. Shibley, I will do that, or try to do it.~~

(Tape H.1967 follows)

30
August 22, 1973
2.50 - 2.55 p.m.
M.R.

Mr. McCallum?

Thank you, Mr. Shibley, I'll do that, or try to do it.

Before I start, I would like to make reference to something that most of you will have seen in the newspapers, which is that in Vancouver just this week the Canadian Bar Association have apparently decided that they won't require lawyers to requalify themselves regularly and in my attempt to explain these documents I'm really not going to try and requalify as a lawyer. All I want to do is to explain in as simple terms as I can what I think the documents mean. And I hope that I will be really of most assistance to those of ~~you~~ you who are not lawyers and that with those of ~~you~~ you who are lawyers I hope that we won't have any arguments over the law so much, certainly today.

If there are points that I say a thing means ² we may have an opportunity to discuss it between now and when I next return to the witness stand, where I am today.

I've referred to the fact that Mr. Houser did most of the drafting in fact. He is my partner and that was the role that he agreed to assume in these proceedings when first we were retained by Hydro. And because he did the actual drafting and I am going to try and say what was in his mind and what was intended by the documents, it's somewhat difficult for me especially since I haven't had an opportunity to talk to him about it. He, fortunate man, is away on holidays again.

I made a fatal mistake yesterday. I went up to Mr. Shibley after we had finished with Mr. Moog and said; "Who's going to be next?" And he said, after mentioning two or three names and quickly deciding in his own mind and out loud that he couldn't use them, looked me full in the face and said; "Jim, you'll have to be next. I'll have to call you."

So, if not only my lack of knowledge shows this afternoon there may also be showing very clearly a lack of preparation and that will be why.

August 30, 1973
2.50 - 2.55 p.m.
M.R.

(Mr. McCallum)

One of the things that I think, just one further thing - I might just touch on before we go into the documents themselves: I have the feeling after having been here throughout these proceedings that there is a fairly widespread misunderstanding of the terms of my retainer and maybe I could just state those fairly concisely now and Mr. Shibley may want to come back to them another time.

Just so that there will be no doubt, maybe that isn't a bad place for me to just touch.

Mr. Shibley: I agree.

Mr. McCallum: I was not retained to make a better deal for Hydro. They had selected Canada Square and Mr. Moog before I was retained. I was not retained to contrast and compare the various proposals that were submitted to Hydro. That had been done before I was retained. What I was retained to do was to basically help ~~me~~ Bill Raney, who is their senior counsel, put the deal that they wanted to go ahead with in writing.

And that was a very basic deal. There were really no big facts to get ahold of. It was simply that they were going to have a building built for them. They were going to pay \$4.92 a foot for the space that they got, and they were going to pay that over 30 years, and at the end of that time with the twinkling of an eye they were going to own the building from that day on, free and clear of any encumbrance and free and clear of Mr. Moog and his companies.

And it was that basic deal that I was to reduce to writing. It was in an effort to put that in writing, that we ended up with that. That's pretty thick and you would think that that looked very much like lawyers and I guess it does, but that thick book of documents was really just to put that simple basic deal in writing. And in the course of that deal or at least in the course of my work, ~~Mr. Sissons who spoke to me first had suggested that...~~

August 30, 1973
2.55-3.00 p.m.
M.F.

H - 1968 - 1

(Mr. McCallum)

~~or at least in the course of my work~~, Mr. Sissons, who spoke to me first, had suggested that I have a look at it also with a view to seeing what was in it for Moog. I really think those were his words, "what was in it for Moog", and I did have a look at it from the point of view of what was in it for Moog and I made some recommendations on the conclusions I reached, to Hydro, which I am sure will be developed in the course of my evidence.

Now having said that, Mr. Shibley, I suppose, unless you want me to, I don't need to go any further at this moment into what I was retained to do and maybe I can just go off on to this but I am in your hands, whatever I can do to help you.

Mr. Shibley: Mr. McCallum, I am glad you have indicated to the committee the situation of your giving evidence this afternoon. What I suggest you do is discuss the contract itself. Later on we may come back to the topic that you are fringing upon; namely, the advice that you afforded to Hydro as to what was in this for Mr. Moog. As I say, I think we might compartmentalize your evidence in that respect unless you feel, as you are going through the documents, you want to make comment as you go along.

I think we might handle the other as a separate topic. The first thing is to give the committee some understanding of what these documents effect.

Mr. Shibley ^{Mr. McCallum}: I think that your suggestion made to me yesterday, and repeated now, sir, is the one that I will try and proceed on. If I depart from the ways a little bit, don't hesitate to get ahold of me and bring me back onto the track.

Mr. Shibley: I am glad that we are dealing with this situation. I think the committee members may feel we are double talking and maybe to make it clear it is part of the material in Mr. McCallum's file. There are notes that I am not going to reference at this time respecting observations he made and

August 30, 1973
2.55-3.00 p.m.
M.F.

H - 1968 - 2

(Mr. Shibley)

comments he made as to the substance of the transaction itself, the terms, whether they were beneficial - the negotiating points, if I may describe them broadly as such - and we will come back to that later on, if you agree, Mr. McCallum?

Mr. McCallum: Yes, I do. In fact I think it probably comes back better later on. I want to ask you at that time - perhaps I should mention it now to you - that you have regard for the fact of my unusual status here. I am a lawyer whose client has waived their privilege and who is therefore going to be faced with memoranda which I put on that file with no intention in my mind of it ever being seen by the client, let alone being seen by you and the members of this committee, let alone being seen by every member of the press and the public.

I don't relish that role and I am just plain diffident as a result, but I know that that is a part of the problem when a public body wants to make an absolutely clean breast of everything and, as you say, some of those memos are pretty candid.

Mr. Shibley: Mr. Chairman, I might say that my first opportunity - and this isn't intended as anything but indicating timing - to start a review of this file was as of last evening; *I think* we got the file yesterday. Some people may even have noticed that I was reading it on the bus this morning. So that I feel equally limited at the moment in a careful dealing.

I think what Mr. McCallum is suggesting is that he spend his time this afternoon explaining the contract and it may necessary to break then and leave to another day dealing with this other material, isn't that so?

~~xxxx~~ Mr. McCallum: That's right, sir.

Mr. Shibley: Yes, okay.

Mr. McCallum: Well all right. If at times I sound as if I am droning like a school teacher or whatever, please forgive me. It is necessary for you to get some idea of the

August 30, 1973
2.55-3.00 p.m.
M.F.

H - 1968 - 3

(Mr. McCallum)

background. Let's start with what we were faced with to see if we can put the deal in perspective.

The land was owned by Hydro and it was registered in Hydro's name. They had had it rezoned, presumably for their new head office building, some years previously.

Now Hydro embarked on a scheme whereby they wanted Canada Square to take title to their lands, build a new building on that land, and that new building and the land would then be registered as it were in Canada Square's name. Hydro wanted to rent from Canada Square ~~the land and~~

Tape H - 1969 follows

H-1969-1

(Mr. McCallum)

~~that new building and the land was then registered as were~~
~~in Canada. Squelch's name. Hydro wanted to rent from Canada Square~~
the land ~~the~~ and the building, except for some commercial space we will refer to, for 30 years, and they wanted a fixed rent over those 30 years, no matter what, no matter how much it cost that man to borrow the financing, no matter what inflation was, no matter what it cost him to build beyond a fixed price. They wanted a firm rent for 30 years. And you will see during the course of these proceedings that that weighed very heavily in their mind, and I must say in mine, because it is in sharp contrast to the type of rents that they had then experienced, and the fact that normally a lease runs for 10 years and the man turns it over and says, "Now I want more, the dollar isn't worth as much". So that the deal Hydro wanted was a firm deal for 30 years.

Mr. Renwick: Mr. Chairman, could I just to set aside one question and get it out of the way now, if it is possible and if it isn't, just say so and we can defer it. The question of the US dollar exchange risk. I took it - it seems to me if we are going to be talking about a fixed deal and a firm deal, that was the ~~exchange~~ fluctuation factor that was still out there. I took it from an interjection by Mr. Genest some days ago now, that in fact, ~~the~~ in the way in which Hydro operates, and I don't know the source of their exchange of why they keep it in the US, that in fact Hydro's position is that that was not an exchange risk; that they could in fact at all times meet their commitment in US dollars in the normal course from US dollars reserves of the Ontario Hydro Electric Power system.

Mr. Genest: That is correct, Mr Renwick. We have ^{an} Hydro has heavy, from power sales for instance obtains US dollars, borrows in the US for its US requirements. It has coal contracts in the US for ~~the supply of~~ the supply of coal. And my instructions are that it has at all times considerable reserves of US dollars, and that it proposes to pay any rent, to take care of any rental payments under this agreement out of its stocks of US dollars. So it will not be in a position of having to go and take Canadian dollars and exchange them.

H-1969-2

Mr. Renwick: So I take it that the source of those US dollars are US dollar revenue-producing operations?

Mr. Genest: And US borrowings.

Mr. Renwick: And US ~~has~~ borrowings. So that we are not in Subject to whoever has to say so can we now categorically set it aside that there is, so far as Hydro is concerned, that exchange risk does not exist with respect to this?

Mr. Genest: It is not a factor.

Mr. Renwick: It is not a factor?

Mr. Genest: That is correct.

Mr. McCallum: It is a ~~minimal~~ minimal. They would say, I think ^{Mr.} Milan ^{Nastich} I am not ~~trying~~ trying to correct here in any way I think Milan will say that there obviously is a risk, because you can't look 30 years into the future. But under their operation he doesn't foresee it as being any real risk to Hydro at all.

Mr. Renwick: Well I won't even put; I want to even eliminate it. We do have to make an assumption because of 30 years. But I take it that on the basis of the operations of Hydro for the past 30 years, that for the next 30 years, if that method of operation continues, they will generate, from the sales of power, from US borrowings, and from other items, actual revenue in US dollars which will be ~~be~~ sufficient to pay the rental?

Mr. Genest: That is my understanding.

Mr. McCallum: That is my understanding too.

Mr. Renwick: Well then when Mr. Nastich comes he can ~~be~~ confirm that.

Mr. McCallum: Mr. Nastich can confirm that.

Mr. Renwick: But I think we can now set it aside for the purpose of our discussion.

Mr. Allan: Mr. Chairman, I have been listening to these discussions. I think this is an oversimplification of the situation. Now I think there is a risk in paying ~~for~~ this rental in US dollars. There may be a benefit by paying it in US dollars. But I don't think you can say that because we are ~~are~~ selling power to the United States and we are ^{paid} ~~paying~~ for it in US dollars that might be worth \$1.10 or \$1.10 for each Canadian dollar that that doesn't mean anything.

AUG. 30/73
3:00 - 3:05 pm
CA

H-1969-3

Mr. Genest: It adds to our US dollar ~~commitments~~ commitments.

Mr. ~~McMahon~~ ^{Allan}: Yes: ~~and it does~~.

Mr. Genest: ~~My~~ ^{but} understanding, and Mr. Nastich ~~had~~ better confirm this, that subject to Mr. Nastich says, my understanding is that in the total picture, Mr. Allan ~~under~~.

Mr. Allan: Well you don't have to buy the dollars perhaps.

Mr. Genest: That's right.

Mr. Allan: But I think it is, that's the only safe..

H-1970-1 follows

30
Aug. 28/73
3.05 to 3.10 pm
DT~~(Mr. Renwick)~~~~my understanding is that in the total picture, Mr. Allan.~~

Mr. Allan: Well, you don't have to buy the dollars perhaps.

Mr. Genest: That's right.

Mr. Allan: But I think it's only -- that's the only saving is the commission in buying or selling the dollars.

Mr. McCallum: Mr. Allan is saying ~~what~~ what I think saying, the very same thing. There is no question that Hydro, Mr. Renwick, considered this as a risk. In fact, it took two or three of them to come down and put their hands on my ~~forehead~~ fevered brow because I think it would be accepted that throughout the piece, I didn't understand this and I had it in my mind that they were going to have to go out in the market each month and buy those American dollars, and I was raising ~~my~~ hang at the thought that that was a risk that they were taking and I couldn't understand why, until toward the very end, they came down and explained to me the sort of thing that Mr. Allan is saying now and Mr. Genest have told you, and made it clear to me that risk on one side, possible benefit on the other side, it was their opinion, after they had given it full and subsequent consideration that it didn't represent a matter of that moment in these proceedings and I don't think the conclusion ^{that} you are coming to is wrong.

Mr. Renwick: That's all I ~~was~~ wondered -- I may have overstated it. I take it that the exchange risk that I am talking about is where you have to go and buy US dollars to meet a commitment and you are subject to a fluctuating exchange, and I take it that in this instance Hydro generates US dollars and those US dollars on past history would be sufficient to meet those rental payments. I think that's what I am trying to say.

Mr. McCallum: I think they ^{and} regard it and I think what Mr. Allan is getting at is something like a surge tank. If it suits their present purposes to buy it, ~~they~~ they can buy it cheap they will buy it and not use what they have got. If ~~they~~ ^{it} didn't they would go the other way around and they would use the American

Aug. 29/73
3.05 to 3.10 pm
DT

(Mr. McCallum)

dollars if they were very expensive at that time --

Mr. Allan: I think this --

Mr. McCallum: That is how they intend to reduce that risk.

Mr. Allan: I think this could be cleared up perhaps more satisfactorily ~~we~~ when Mr. Nastich ~~returns~~ *is on the stand.*

Mr. McCallum: Sure, sure. Well, in any event, I was explaining to you that they wanted a 30-year fixed rent and they wanted most of all at the end of that 30 years to be the owner of that building and those lands, free and clear of any claim by anybody else, and that played a large part in their thinking, and in ~~their~~ mine, because they had intended, and this is what happened, to take that land that they own, and lease it over to Canada Square for \$1.00 a year, and that's what started it.

Hydro made an agreement then, and that explains the agreement you have got here, Hydro made an agreement with Canada Square under which Canada Square must erect a new building according to detailed plans and specifications, all of which must be approved by Hydro and then the parties further agreed to enter into a series of leases which I suppose we can describe in this way.

We have at this point in time Canada Square in possession of the land under a ground lease. Canada Square have completed Hydro's new building. Thereupon, Canada Square leases the land and the building to Hydro for an effective 30 years at a fixed rental over the whole of that term of not more than \$3.35 a foot, except for the commercial area. This is the lease under which Hydro makes its payment, not to Canada Square, the landlord, but directly to -- are you still calling it the X Company? -- to the X Company, who is the first mortgagee.

This is called the net lease and the money is owed, *it's part* that \$3.35 ~~we~~, we will just ~~use~~ that for a moment, ~~that~~ that \$3.35 is owed to Canada Square. It is part of the total payment of \$4.84, but under the arrangements we made, instead of paying that \$3.35, under this net lease, to Canada Square, we pay it directly to the first

H-1970-3

Aug. 30/73
3.05 to 3.10 pm
DT

(Mr. McCallum)

mortgagee and we get a credit for whatever we pay, for the principle and interest under that loan, against the total of \$4.84. The balance has to be paid to Canada Square.

This particular lease, called the net lease, has nothing in it about the obligations of Canada Square to provide janitor service, to provide maintenance, and those other amenities of life that a tenant wants when he is in ~~the~~^a building. I look at that lease as being merely a lease of space. Essentially what ~~is happening at that point is that Hydro are saying "come what may, as long as we are in occupation"~~

(H-1971 to follow)



Aug. 30/73
3:10 - 3:15 pm.
M.S.

(Mr. McCallum)

is happening at that point is that Hydro are saying, come what may, as long as we're in occupation of those premises and the building hasn't been destroyed, we're going to be prepared to pay that \$3.35 a foot for that space. And that lease, for reasons that you'll see in a minute, is very important because it's not cluttered up with what the rest of the \$4.84, the difference between the \$3.35 and the \$4.84, is really attributable to. Which is ~~you~~ your janitors, your maintenance and the other frills. I find it convenient, and maybe you will then, to think of this net lease, \$3.35 a foot lease, as being just for space. And you can understand how, under those circumstances, Mr. Bradshaw referred to it as a "come-hell-or-high-water" payment. Because what he was, I am sure, referring to is that, under the terms of this kind of a lease you've got your space, you're not supposed to get anything else, every other charge is supposed to be yours, and there's no reason in the world why you shouldn't pay your \$3.35 a foot right throughout. No quarrels. What can you quarrel about, the space is yours. If you want to quarrel about the janitor? Quarrel under another lease. Hold back your rent under another lease. That document, called the net lease, was the document that, I think, provided the real motive power to enable Canada Square to borrow \$45 million for 30 years at eight per cent.

Mr. Shibley: May ~~I~~ I interrupt you, Mr. McCallum? Isn't \$3.35 the ---

Mr. McCallum: No. I'm just using that as a figure which is in the papers.

Mr. Shibley: Well, whatever is the amount under that net lease, is precisely the amount which is required to make ^{the} amortized payments which would retire a

Aug. 30/73
3:10 - 3:15 pm.
M.S.

(Mr. Shibley)

loan of \$45 million over 30 years at eight per cent?

Mr. McCallum: That's right, sir.

Mr. Shibley: So that, when you say it's a "hell-or-high-water" lease, you pay that for space regardless of any collateral circumstance evolving. The amount was fixed by relating to the cost of the moneys to be borrowed. It wasn't a figure that related to the building as such, and neither was it a figure^{out}/of the air. It was a figure required to make the amortized payments.

Mr. McCallum: Yes. The whole object of the exercise was to have a payment under this net lease which would pay off for certain, absolutely guaranteed to Hydro that they, out of their own pocket and directly to the first mortgagee, would pay off that first mortgage debt that was going to be created by Canada Square. Because at the end of that time the whole structure of leases, as an oversimplification, just collapses and Hydro becomes the full and absolute owner of the land and the building that had been erected on it.

Mr. Shibley: Now, again, I would just assist you and the committee and make it clear, in other words, the agreements and their overall result, permit Hydro - in fact, you have the right and Canada Square is subject to the obligation to permit you to make your payments direct to the lending institution, under that net lease. To make the moneys payable direct to the lending institution and thereby avoid any possibility of default under the mortgage.

Mr. McCallum: That's right.

Mr. Shibley: And those are the payments, incidentally, that are being made in U.S. funds.

Mr. McCallum: That's right.

Mr. Shibley: And it's only that amount which is payable in U.S.

Mr. McCallum: That's correct, Mr. Shibley.

Mr. Shibley: Because it's only the amount which is borrowed, respecting which there would be any exchange problem.

Mr. McCallum: That's right. The rest of us live in Canada, we build with Canadian dollars and we pay back and pay rent in Canadian dollars.

Mr. Shibley: We have our maintenance and so forth are all paid in Canadian dollars.

Mr. McCallum: That's right.

Mr. Shibley: I hope I am not duly interrupting you, but while you were at that point I was trying to make it clear to the committee. Carry on.

Mr. McCallum: Well now, it may be a little mystifying yet, but I hope I can clear it up as we move along. Let me just take you back now, till I try and explain to you what we really set out to do in the beginning. You see, when we had the first deal brought into us, what we were trying to do was to have Canada Square build a building, lease it to us for 30 years at \$4.92 a foot, and at the end of that time we would own the building. Well, you don't need all these documents to do just that, if that's all you want. All you needed to do was to take the land, which was Hydro's, lease it over to Canada Square, get Canada Square to put up the building and lease the space back to us at \$4.92 a foot, which would give us not only our space, but our maintenance and our janitors. So, we could have done it with a building agreement and a building lease. ~~The trouble was that's how we set out to do it, and it was in the.....~~

August 30, 1973
3.15 - 3.20 p.m.
M.R.

(Mr. McCallum)

~~... building lease~~ The trouble was that's how we set out to do it and it was in the course of that discussion of providing just that many documents that we ran into an impasse. What happened was, as I recall, we had an argument about where and in what priority Canada Square were going to be able to register their mortgage. Hydro took the position that we didn't want Canada Square to be able to register that mortgage ahead of our lease. Just on a simple basic proposition that we didn't want anybody ahead of our right to the property which we got under the lease ~~for~~ - the \$4.84 lease ...

Mr. Gaunt: At the end of the 30 year period.

Mr. McCallum: Or during the time if they failed to make some payments ^(or something) we had a mortgagee saying: "I'm ahead of you, I'll foreclose you out"; and there would be Hydro standing on the end of a limb. On the other hand, that was our position. We said, "No, no, we want that lease to come ahead of your mortgage".

Well, Mr. Bradshaw and his team said: "No, we want that mortgage to come ahead of the lease because ..." not only that but that's when he started talking about a high credit lease. He wanted that combined lease for space and services to be what's called "a high credit lease", and we talked about the complicated way in which it could be done and which we could achieve what would be for his purposes a "high credit lease".

But we were really basically at an impasse over where the lease and the mortgage were going to be registered. In - I'm just trying to recall this - In the course of that argument we said, on behalf of Hydro; "Well, you know from our point of view, we are not unsympathetic to your position because the better the position that you can place that lease, and the better you make that lease, the cheaper you can borrow your money and the cheaper you can borrow your money the better

August 30, 1973
3.15 - 3.20 p.m.
M.R.

(Mr. McCallum)

it is for Hydro. Because we looked ^{that} at ~~it~~ as buying a building over 30 years and we don't want your paying a lot of money - the best security we can give you is very much in our interest to give you."

So there were two teams of lawyers at loggerheads, but really both trying to arrive at the same result of giving them the best security they could get. It was at that time, as I recall, in the course of a conversation, that Elmer Houser suggested well maybe we can do it this way and this way is the way we've done it with what ^{involves} ~~evolves~~, in what we call a net lease and then almost a cancelling lease called a ~~"leaseback"~~ ^{then} "leaseback", and lo and behold the building lease.

That's how it came about and knowing how it came about, maybe it will make some sense to you why we did it, because looking at the face of it, it, I'm sure, must appear, ^{and} even to you lawyers it must appear to be almost unnecessarily complicated when we could, as I'm sure you've already said to yourselves, we could have done it by simply leasing the land over to Canada Square and then taking back a building lease with respect to the building.

Well, that's why we did it. Now, in that light, see if ~~if I can~~ I can give you some more assistance.

What then did we end up with? We ended up with what I have been describing to you, the net lease or Mr. Bradshaw called it "the hell-and-high-water lease". I call that a space lease. It was - for sure we have to pay it and we are just getting space. At that point what had happened was: Canada Square had leased space to Hydro. They hadn't made any arrangements to charge us for services ^{and so on, as} ~~so long as it was~~ what they wanted to do. So we thought, well now what we'll do is we'll in effect make a cancelling lease. We'll have the net lease which leases the space to Hydro. We'll then turn around and we'll - Hydro will lease the whole thing back to Canada Square on almost the same terms.

August 30, 1973
3.15 - 3.20 p.m.
M.R.

(Mr. McCallum)

— I'll be more detailed about this in a minute —

On almost ~~the~~ exactly the same terms, which will just effectively have the result of cancelling out that lease. It can be used for financing purposes, but it will just make a wash of it almost. Now, lo and behold, we've got the whole thing back in Canada Square's hands, land, buildings, the whole bundle. Now we'll have a building lease out to Hydro under which we'll give them the space, we'll give them the ~~the~~ janitors, we'll give them the maintenance, we'll give them all the things that they wanted, and that's the one we'll charge them the \$4.92 for; or what has now become \$4.84, as we'll talk about the arithmetic later on.

So, that meant you had the following documents at that point: ~~You had a ground lease, you had a net lease, ...~~

H-11973 to follow

Aug. 30/73
3.20-3.25p.m.
B.A.

H-1973-1

(Mr. McCallum)

~~That is what you had the following documents at that point:~~ You had a ground lease, you had a net lease, you had a lease-back or a cancelling lease, and then you had the big lease called the building lease, under which everything was taken care of. That's why you ~~are~~ are looking at so many documents.

Just before I go on, let me see if I can state it clearly and see if I have everybody with me because I think the deal then becomes very easy to understand ^{and the} ~~in~~ terms of the documents become very easy to understand if you have this basic framework.

The land went to Canada Square under the ground lease. Canada Square builds an agreement on its land, at this point, builds a building under an agreement. At that point, Canada Square have got the land and the building. They now rent the space in that building to Hydro under the net lease. Then, they lease it back. Hydro leases it back to Canada Square, that is your lease-back. That is a sort of a rub-out lease to get everything into position so that you can now take the building and the land and the space and the services, and lease it all out to Hydro at \$4.84 a foot, or \$4.92 a foot. Now, that is what has been done, and I don't want to go on for a moment, although I think it will become much clearer to you as we go through the documents. It may just be, though, Mr. Chairman, at this point, if I stop for a minute, we can get some questions cleared up and it will ~~help~~ help.

Mr. Shibley: Yes, at what point in the sequence was registration to take effect, of the financing?

Mr. McCallum: You will get each and every one of those right out of this agreement, sir, and if you will just hold that question we will tie it all up in a ^{KNOT} ~~know~~ for you right under the terms of the agreement.

Mr. Shibley: All right. Incidentally, and I don't ~~you~~ want to throw you off stride, but we did ask for a chronology to be

Aug.30/73
3.20=3.25p.m.
B.A.

(Mr. Shibley)

prepared on the common effort of Canada Square and yourself, as to the dates of execution and delivery of these documents.

Has that ~~a~~ been prepared as yet?

Mr. McCallum : No, it hasn't and -- Mr. Bradshaw is here today. I don't know whether we told you what our problem was but -- I don't ~~be~~ know if I have his letter here but let me tell you, if I go wrong, he will jump up and tell me I'm wrong.

When you asked Mr. Bradshaw to get it ready along with me, he went back to his office that night - if you remember he was leaving for his holidays - he obviously worked at it, he went through all his files trying to find out if he could come up with a fair answer ^{or} ~~an~~ when those documents were executed by Canada Square. He wasn't able to do that and he wrote me, and I think he may have sent a copy of that letter ~~a~~ to you.

Mr. Shibley: Yes, I have it. It is dated August 2nd.

Mr. McCallum: Right. Now, ~~what~~ similarly with me, that when I got the documents which had been executed by Canada ~~S~~ Square, I made no record of the date. I took them up to Hydro and when they got around to putting their John Henry o_n it after that, I don't know. I have no knowledge other than the ~~a~~ information that is contained in Mr. Easson's affidavit, which he gave you as to the date upon which Hydro put their signatures and their seals, sir.

Mr. Shibley: Well, Mr. McCallum don't commit to that ~~your~~ position as yet, because, just on a quick scan of your own notes and documents, there may be assistance to you as to fixing those dates. I think it is fairly important to attempt a precise chronology because it is in the minds of, I know, some committee members as to whether the commitment for funds from the X Company, was ~~made~~ made as at the time of the execution and delivery of these documents. In other words, what was the sequence, and it is for that reason ~~that~~ there is particular interest as to when - you see, November 1, 1972 is a suggested date. It appears that some of the documents may have been dealt with then and some later. As you know,

(Mr. Shibley)

there are two documents referable to the commitment, one in November and one in December, so we are interested in that chronology to ascertain whether Canads Square contemporaneously with formalizing its agreement with Hydro, was obtaining its commitment for funds, or whether there was any period at all when it was at risk as to that ~~the~~ commitment. Do you follow me?

Mr. McCallum: Yes I do.

Mr. Shibley: And I say that, not only for your information but for Mr. Bradshaw who I see is with us, and I ask you to go back at your ^{EFFORTS} ~~efforts~~ to give us that chronology.

Mr. McCallum: Well, I certainly will. Let me see if we can elicit a little more help from you, though. Have you got that affidavit of Mr. Easson's in front of you?

(Tape H-1974 follows)

August 30, 1973
3.25-3.30 p.m.
M.F.

H - 1974 - 1

(Mr. McCallum)

~~elicit a little more help from you though. Have you got that affidavit of Mr. Easson's in front of you?~~

Mr. Shibley: It is an exhibit -----

Mr. McCallum: Exhibit 107, sir.

Mr. Shibley: Yes.

MR. McCallum: Now if you could get that in front of you and tell me in what way that affidavit fails to help you on your problem as to the execution of Hydro, I have got, don't you see, to go back to them and say -----

Mr. Shibley: No, I am not thinking so much of Hydro as I am Canada Square, frankly. I realized that Mr. Easson's affidavit covered the execution by Hydro but even as for that, I might tell you, your file seems to indicate that at some point a date had to be settled on for documentation. That's the feeling I get but as I say it was a very quick scan and if you asked me to put my finger on it right now -----

Mr. McCallum: I don't think you are that wrong. I think - Jim will maybe tell you - was it the 18th of October that we were trying to fix all the document dates at and I just don't think we succeeded.

Mr. Shibley: No, it was ~~after~~ after November 1. ~~There's~~ There's a/
~~the~~ memorandum ~~and~~ in your file so that that is why I asked you not to be too firm on that till you have looked at it with me.

Mr. McCallum: I am not firm. I will go back and look.

Mr. Shibley: But I am still anxious, as I think the committee is, because the offering to X company was made I believe on November 8th and was subject thereafter only to the approval of the finance committee which came through in December of 72, and because of the proximity of time to the date of execution and delivery of these documents, it could well be that the commitment was more or less contemporaneous, and I think we are interested in knowing whether it was.

August 30, 1973
3.25-3.30 p.m.
M.F.

H - 1974 - 2

Mr. McCallum: Okay. I will go away from this in a moment but in a quick look at the affidavit of Mr. Easson, the only documents - he signed something on the 17th of November, but some were signed on the 1st of November, it seems to me, and I suppose that with respect to those not signed by the Commission on the 1st of November, we no longer care about when they were signed by Canada Square. It would really be those documents signed by Canada Square after the 1st of November, which in turn would have to be those documents executed by Hydro after the 1st of November and presumably up to the 17th, that we are really looking at?

Mr. Shibley: Oh yes I have - I might tell you there is a memorandum in your file dated November 8, 1972, from Hydro to yourself. I am sorry, it is from Mr. Easson of Hydro:

"I discussed the question you raised yesterday afternoon concerning the dates which appear on the agreement between the Commission and Canada Square Corporation Limited, and the three letter agreements which clarify or amend that agreement.

"I believe two of the latter are dated October 18, although I have only one, and the third is dated October 30th. We are both of the opinion that the best way to approach this matter is via the Commission minute recording proceedings taken at the meeting of November 1, 1972. This can be accomplished by using some such wording as " - and then it gives the proposed wording for the minute.

"The minute then would conclude with authorization for the Commission to execute the four documents as submitted. What we are really attempting to do here is clarify the actual date of execution by the Commission. This date is referred to in clauses 2, 3, 16, 35 and 40 of the main agreement, all of which contain some such provision as "within blank days after the party ~~party~~

Tape H - 1975 follows

Aug. 30/73
3.30 to 3.35 pm
DT

(Mr. Shibley)

by the commission. ~~This date is referred to in clauses 2, 3, 16, 35 and 40 of the main agreement all of which contain some such provision as to the time from days after the party, after the execution of this agreement.~~ If the above procedure is adopted in the commission minute, it will clearly establish that the earliest possible date of the execution by both parties would be November 1, 1972. If, in addition to the above approach, you were to swear an affidavit while the matter is fresh in your mind as some lawyers say, the date would be even more clearly established for further use in the unlikely event that some controversy might arise as to that exact date." Now, that's from Miss West, I think --

Mr. McCallum: Yes, it is.

Mr. Shibley: The senior solicitor in Mr. --

It appears, therefore, that notwithstanding Mr. Easson's affidavit, this memorandum of November 8th, 1972, would suggest a pre-dating of the documents, in part at least.

~~Mr. Shibley~~ ^{Dated} ~~the 1st of November 1972~~

~~Mr. Shibley~~ There was no ulterior motive here.

There had to be a date pegged, but ~~not~~ as at November 8th, 1972, which is a significant date I might say as to the commitment documents for funding, there was still some exercise then as to what date ~~s~~ should be given the documents, so that's why I asked you to be careful not to seize too quickly on Mr. Easson's ~~affidavit~~ affidavit.

Mr. McCallum: Well, O.K., I won't because I can see what you suggest. I just want to refer you to Mr. Easson's affidavit, paragraph 5, in which he is referring to the most important document, I think, which is the agreement. And my reading of ~~para~~ paragraph 5 and paragraph 2 is that the commission authorized the signature of the ^{main} ~~main~~ agreement on the 1st of November and then he says, ~~para~~ paragraph 5; "pursuant to the authorization referred to in ~~para~~ paragraph 3, the documents referred to in paragraph 2 were signed by George E. Gathercole, chairman and by me and the corporate seal of the commission was

(Mr. McCallum)

thereunto affixed on the 1st day of November, 1972."

Mr. Shibley: Yes --

Mr. McCallum: You have, as a result of Miss West's letter, some doubt about whether he's *accurate in that*.

Mr. Shibley: With all due respect for the affidavit ~~in question~~ in question, I suggest to you that this memorandum of November 8th puts some question in my mind as to whether -- you see, what's happening, according to my reading of this memorandum and would you agree with me, Mr. McCallum -- is that as late as November 8th you are trying to peg a date for the documents. Is that right?

Mr. Genest: I don't --

Mr. McCallum: Some of them only, sir.

Mr. Shibley: Some, yes.

Mr. McCallum: *There were* ~~Some of~~ those letter agreements.

Mr. Shibley: Yes.

Mr. McCallum: But I don't think that anybody was pegging any date for the document, the main document, which is the agreement.

Mr. Shibley: Can you help us, Mr. Genest?

Mr. Genest: I just don't read the -- my understanding, M I must say, Mr. Shibley, from officers of the commission was that the agreement was signed by the commission on November 1st. As far as they are concerned, that's when they did the deal, and I must say I don't read Miss West's memorandum the same way you do. I think that she's concerned about the date, the formal date, of October 18th and the fact that the commission only signed them on November 1st and that there must be some way of establishing when the ~~agreement~~ documents were actually signed and that's the way I read the memorandum. It doesn't seem to indicate to me that there's a document left to be signed.

Mr. Shibley: Well, look at it anyway.

Mr. Genest: I will look at it. I will discuss it with Miss West if that's going to be any help.

Mr. Chairman: That is one of your better assignments,

Aug. 30/73
3.30 to 3.35 pm
DT

(Mr. Chairman)

Mr. Genest.

Mr. Genest: I'll have dinner with her.
Mr. McCallum: I was thinking the same thing.

Not only that, he is now taking the notes.

Mr. Genest: ~~Mr. McCallum~~ I ~~would~~ ^{know there's been a} ~~note about~~ switch ~~in~~ in
roles here.

Mr. Shibley: O.K. Well, in any event, would you carry on, Mr. McCallum?

Mr. McCallum: O.K.

Mr. Renwick: Mr. ~~Chairman~~ Chairman, could I just -- from the point of view of the committee, could I try to shorten down our chore in this particular field of the documents and see whether or not, without precipitating a discussion, Mr. McCallum would agree with what is of interest to us in the documents? A great deal of it ^{has been} ~~is in~~ the legal form that has been used in order to accomplish the purpose. I take it that basically the only documents in this group that we are now interested in, having had your explanation of the other documents, are the first document, which is the agreement with Canada Square, and the last document, which is the building lease, and so far as I can see, one of the supplementary letters, and that we need not concern ourselves with the terms of the ground lease, the terms of the "hell-or-high-water" net lease, of the lease-back, which are the intervening documents.

~~Mr. McCallum: I don't think you need to either. I agree with you. I think they may be of interest.~~

(H-1976 to follow)

H-1976-1

Mr. McCallum: I don't think you need to either. I agree with you. I think that they may be of interest to some,

Mr. Shibley: As long as everybody understands the outline that Mr. McCallum has given to this point in the evidence as the reasons for that documentation, I agree.

Mr. W. Hodgson: I think we pretty well understand.

Mr. Chairman: I'm worrying about Mr. Allan.

Mr. Allan: I'm quite in agreement with Mr. Renwick's suggestion.

Mr. Renwick: How many supplementary letters are there?

Mr. McCallum: I thought there were four

Mr. Genest: Five.

Mr. Shibley: Five.

Mr. Renwick: Five. Well there are one or two of those which I think seem to me to be significant. And then if I could try to cut it down a little bit more. The only clauses in the main agreement, that is the agreement between Ontario Hydro and Canada Square, that I think the committee needs to concern themselves with, in my view, are clauses 12 - which is the obligation of Canada Square to construct the building; and clause 19 - which I think requires explanation as to that \$2 million put-up, about it.

Mr. Shibley: Well Mr. Renwick,

Mr. Genest: Six or seven.

Mr. Shibley: I really think there are other clauses that are important.

Mr. Renwick: All right. I'll withdraw rather than participate a discussion, and then I'd like to get over those, whatever clauses are significant in the first agreement, I'd like to try and get over those quickly and then get to the building lease clauses which seem to me to be the ones ~~where~~ we should focus our attention.

Mr. McCallum: Okay, ~~sure~~ ^{sure}. If I may then I will start with the agreement. And if I'm poking just give me a prod.

You really won't be able to follow this unless you have a copy of the agreement in front of you. If you have a copy of the agreement I think I can try and ~~simplify~~ ^{simplify} it.

3
H-1976-9

Mr. Henderson: It's not dated November 1.

Mr. McCallum: No, that is right, they were all made up
October# 18.

Now if you have it, can I go ahead now?

Mr. Chairman: We ~~that~~ should all have them.

Mr. McCallum: Okay. Well if you look at the first page
you will see that it is between Hydro and Canada Square. It simply
says ~~that~~ Ontario Hydro is the owner of the lands. ~~Ontario~~

"Ontario Hydro has agreed to lease the site to Canada Square
under a ground lease in order to permit Canada Square to construct a
building"

And you can forget some words:

"on the site, and to lease the Building and the site to
Ontario Hydro ~~on~~ on the terms ~~and~~ set out in this agreement."

Now there is nothing on page 2 that need concern you.

Nothing on page 3.

Page 4, there will be some things that you will want to
just underline - the meaning of ~~the~~ permanent financing of the building"
because you are going to come across that; which "means the mortgage
securing the loan to Canada Square of the funds borrowed by it,
upon or following the completion of the building to finance the
construction thereof."

We have referred to net lease, lease back and building lease,
but they are defined. I think you should pay some attention to (k)
and (l);

"preliminary plans and specifications" means the drawings
referred to in subsection 5(a) and the outline specifications, room
schedules and allowances referred to in subsection 5(b);

That should be underlined because you are going to go
looking for that some time.

"approved plans".

I am just pointing out to you there is a difference between
preliminary plans and approved plans.

"approved plans" means the detailed drawings"

Notice it doesn't say preliminary drawings, it says:

H-1976-3

"the detailed drawings, elevations, specifications and other material to be prepared by Canada Square pursuant to section 5 and approved by Ontario Hydro pursuant to section 6;"

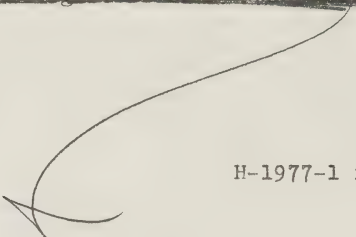
Will you just underline that "approved by"; that is a part of the definition. ^{They} ~~don't~~ don't get to be approved unless they are approved.

Turn over to page 5; you really just need to underline the first two lines which read as follows:

"Within 60 days after the execution of this agreement by both parties hereto the parties hereto shall execute the ground lease"

That is to put the land over in their name. ~~Gentlemen that was done; that lease was registered on January 8, 1977.~~

H-1977-1 follows



Aug. 30/73
3:40 - 3:45 pm.
M.S.

(Mr. McCallum)

~~over to the same~~ Gentlemen, that was done. That lease was registered on January 8, 1973. Those of you who have a bent to understand it, it's registered as number 153568EP.

Paragraph five - you can turn over to page six now. You can underline the first three lines, really, what you're looking for. "Canada Square shall, in consultation with Ontario Hydro, prepare and furnish to Ontario Hydro without charge, detailed drawings, elevations, specs, including materials to be used, details of location, etcetera."

And then down three or four more lines.

"All of which shall be prepared in accordance with the preliminary plans and specifications comprising schedule C to this agreement." The rest of it you don't need to worry yourselves about.

What that is saying is, as I have it, is simply this - Canada Square must prepare detailed drawings and specifications in accordance with the preliminary plans and specifications which are attached.

Now, if you go over to paragraph six.

Mr. Henderson: Mr. Chairman, could we just ask a question at that stage?

Mr. Chairman: Yes.

Mr. Henderson: Would this be the reason for the difference in what Hanscomb prepared, and then Canada Square came back with?

Mr. Shibley: Hanscomb and Roy?

Mr. Henderson: Yes.

Mr. McCallum: There's no doubt that most of the approved drawings, as I understood the evidence that was given to you, were not given to Hanscomb Roy when they made their first/~~edition~~ of their report. Do you remember?

Mr. Henderson: Yes.

Mr. McCallum: And I think Mr. Moog told you that, when they found out what that did, they became suspicious of whether they had access to those drawings and they went to him, I guess, to his people, and got those kind of more detailed drawings which enabled them to make a subsequent edition of their report. That's as I understood the evidence.

Mr. Henderson: Okay. Very good. Thank you.

Mr. McCallum: Where did I get to now? Paragraph six. If you'll underline the first four lines and the last line, you've got the nub of that. It says, "At the time of the furnishing to Ontario Hydro of the material specified in the preceeding section, Canada Square shall, in writing, request Ontario Hydro's approval thereof, and upon approval by Ontario Hydro, such drawings, elevations and specs..." Now, drop down to your bottom line, "... shall constitute the approved plans under the agreement." In other words, if you're going to have approved plans, you have to get them approved by Hydro.

Now, paragraph seven. If you'll put sort of a double line under the first three, four words. "Prior to the approval..." Because those are the key words. "Prior to the approval...", drop down to the next line "...Ontario Hydro may request such amendments therein as it may deem advisable; provided that such amendments do not result in structural or other substantial changes in the Building as described in the preliminary plans and specifications."

So that, before you have approved plans, as they say, "prior to the approval", Hydro can ask for changes, "...provided that such amendments do not result in structural or other ^{SUBSTANTIAL} changes in the Building as described in the preliminary plans..."

Mr. Gaunt: Mr. Chairman, May I ask a question?

Mr. Chairman: Yes, Mr. Gaunt.

Mr. Gaunt: Mr. McCallum, are those plans now approved by Hydro?

Mr. McCallum: Which are they, sir?

Mr. Gaunt: Well, the approved plans under Section 6.

Mr. McCallum: No, sir. No.

Mr. Gaunt: They're not approved ^{as} of this date?

Mr. McCallum: No. The only plans that are in being, and which have been approved as it were, are the things that are the preliminary plans. Now, from the time of the preliminary plans, as I am told, to today, only one inconsequential other plan, or detailed plan, has been approved. No other plans for the construction of that building, that could be considered the detailed plans, have been approved.

Mr. Shibley: Just while you're on this clause, Mr. McCallum. Version number two of the Hanscomb Roy report included a full sprinkler system as something that apparently Mr. Candy had indicated, was a change that he wanted to effect and, respecting which, he ~~seems~~ appears to have interpreted the contract as being his right on behalf of Hydro to be included. Now, just using that, I gather Canada Square took an opposite view and said, "oh, no. We are not obligated to build you a full sprinkler system at our cost within the \$44.4 million limit. If we are to be asked to do....."

Tape H 1978 follows

August 30, 1973
3.45 - 3.50 p.m.
M.R.

(Mr. Shibley)

~~...cost within the \$44,400,000 limit if we are to be asked~~
to do so there will be an extra." Now, using that as an example for the committee: How does this clause that you are now dealing with apply?

Mr. McCallum: Well, my understanding was, and I haven't looked at the documents, but my understanding was that in the case of the sprinkler system, it was shown in the preliminary specs as being for the account of Hydro.

Mr. Shibley: No. I'm sorry, I'll help you. I think what it showed was that there would be sprinklers only in certain areas and that the whole building would ~~be~~ not be sprinklered.

Mr. McCallum: Mm-mmh.

Mr. Shibley: So that, is it not a case that in order to understand this clause you are on, that if the change effects a change from the preliminary plans, to the extent that the preliminary plans and specifications are specific, then Hydro cannot make such changes and have them installed or made at the expense of Canada Square?

Mr. McCallum: I think that's basically true. The thing is that the language of the section contemplates some leeway to allow for the very sort of thing that I think you must be seeing, that is to say, the agreement of the parties arrived at that they will do it such and such a way and within the intent and framework of the preliminary drawings.

Mr. Shibley: No, but I just want to point up with you and to the committee the importance of the preliminary plans and specifications, *in that -*

Mr. McCallum: Yes, ~~but~~ but I am answering ~~me~~

Mr. Shibley: They do tend to regulate ~~me~~

Mr. McCallum: Yes.

Mr. Shibley: ~~the~~ the nature of the changes that can be asked for under this clause.

August 30, 1973
3.45 - 3.50 p.m.
M.R.

Mr. McCallum: Yes, they do.

Mr. Shibley: If the preliminary specification is sufficiently particular, such as in the case of the sprinklers, Mr. Candy, on behalf of Hydro, cannot stipulate for a change in that respect for the account of Canada Square.

Mr. McCallum: That's right. If he was met by the other side who said that is not within the intent and framework, then I suppose there would be a first class argument about who is going to pay for it.

Mr. Shibley: Right.

Mr. McCallum: On the other hand, what I've been endeavouring to point out to you is that when two people who have a desire to get along together are looking at a document which says "if it's within the ~~the~~ intent and framework", they might well consider it ~~was~~ ^{was} within the intent and framework and away they go.

Mr. Shibley: Yes, All right, let's take the other example. I'm trying to help the committee by relating it to specifics. The ceiling was the subject of a particular item in the specification which is part of the preliminary specs. It was to be a lay-in ceiling much like this one and accordingly, again, for that reason, Hydro could not have ~~spec~~ specified for the change to the recessed coffered ceiling that is now to be installed and that is why when Mr. Moog gave his testimony he said: "We are doing it ~~for you~~ at our cost" and ~~at no~~ ^{without} extra charge, although they were under no obligation to do so under the contract.

Mr. McCallum: Well, I think ...

Mr. Shibley: Isn't that the converse example?

Mr. McCallum: It may be. My difficulty is that I haven't read the ~~spec~~ specification with respect to what you are talking about.

Mr. Shibley: Oh.

August 30, 1973
3.45 - 3.50 p.m.
M.R.

Mr. McCallum: But I have some practical knowledge of what goes on. If the specification required a ceiling or said that this was what you were going to put in -


Mr. Shibley: Yes, which is what it did; it said a lay-in ceiling, which is much like this.

Mr. McCallum: Well, that's true. You see these lights?

Mr. Shibley: Yes.

Mr. McCallum: Mr. Candy will explain it. People who are in the business will explain it better than I do. But the intent of the building was to have an open landscape which was to be designed in such a way as to minimize noise. Consistent with that, the noise is much more minimal if instead of having those broad light reflectors, which reflect noise just as much from here and there on either side of a partition that doesn't go any higher than this ~.

Mr. Shibley: Mr. McCallum, I don't want to interrupt, you but you are in to the architectural sphere. What I'm trying to do now is to have the committee understand this agreement and I'm trying to point up to the committee that the preliminary specifications are of ~~substantial importance in~~
~~the sense that if changes are required~~.



H - 1979 - 1

(Mr. Shibley)

of substantial importance in the sense that if changes are required or requested by Hydro, the preliminary specifications will be looked to to ascertain whether the change is a change from that preliminary spec. If it is, the change will be at the cost of Hydro, if it is an extra cost.

Mr. McCallum: I wholeheartedly agree with what you are saying.

Mr. Shibley: If it is not within the specifications, then it may be a change that Canada Square will absorb.

Mr. McCallum: No question, and all I am doing is saying that while you are right, go on - and I am adding to it, as they do in these parliamentary circles, by way of ^{an} amendment if anything - I am simply saying that when they sit down to consider the intent, they consider the overall intent of what they are trying to achieve, and we will have to wait until the architect explains it to you.

Mr. Shibley: All right, fine, but I just want the clause understood at the moment.

Mr. McCallum: I just don't want to force you to use his evidence.

Mr. Renwick: Mr. Chairman, going on with Mr. Gaunt's question, is there any significance in the approved ^{plans} ~~plans~~ not having been approved at this ^{date} ~~stage~~?

Mr. McCallum
Mr. Renwick: To my knowledge there is no significance, because I am not aware of any request having been made for them to be approved at this date.

Mr. Shibley: No, Mr. McCallum, if I may help Mr. Renwick. I understood from Mr. Moog, and Mr. Finlayson can correct me if I am wrong as to this, these plans are an on-going thing. They are actually drawing plans as the building is under construction and in fact, my memory of what Mr. Moog says is that the whole of the final plans are not likely to be finalized until the

H - 1979 - 2

(Mr. Shibley)

building is ~~now~~ nearly complete. I see M^r. Coles is nodding his head in agreement. So that part of the advantage of going the developer route was that they could get the shovel in the ground without delay, without the need for drawing full plans and specifications that might have taken another -- well, somebody mentioned nine months - and I think it would be common to expect longer than that.

So that one of the advantages of going the developer route - and I think in fairness to Canada Square and particularly having regard for the thoughts of some of the committee members - was that they could enter into the agreement, get a shovel in the ground immediately, and do the planning as the building went up and that is happening even yet, and that there will not be final plans for the whole building probably until the building is completed. Am I not right in that?

Mr. Genest: Yes, that is my understanding.

Mr. Renwick: So for practical purposes the language of some of these clauses is out of line with what in fact the practice will be?

Mr. Shibley: That isn't completely right either, Mr. Renwick, because a plan, let's say, for the podium area might be made final -----

Mr. Renwick: No, that wasn't my point. I simply say that you know if you are going to keep a set of the approved drawings and approved plans on the site, there is not a hell of a lot of point in keeping the set of approved plans on the site after the building is finished, and similarly -- I am not making any criticism of it, I am simply saying that in fact the procedural method followed will not accord with these documents at all, which means that your point is totally correct almost, that for our purposes the preliminary plans and the on-going work in connection with the preliminary plans, are the guts of how the building will, in fact, be put up.

August 30, 1973
3.50-3.55 p.m.
M.F.

H - 1979 - 3

Mr. Shibley: Well a gain, you have got it and you haven't quite got it precisely, and if I may help Mr. McCallum on this score -----

Mr. Renwick: Help me too.

Mr. Shibley: The preliminary plans are the guts in a sense, but they are a reference point. If, when they come to zero in on the final plans, this is my understanding, those final plans are in principle and substantially in accord with what were the preliminary plans, then that is for the account of Canada Square.

But if what is to be part of the final plans is in direct conflict - let's take the extreme case - of what is in the preliminary specifications, then that would be for the account of Hydro, unless Canada Square assumed the cost voluntarily as it is doing in the case of the coffered ceiling.

Mr. Genest: We don't agree with that, Mr. Shibley.

Mr. Shibley: I beg your pardon?

Mr. Genest: We don't agree ~~that~~ that that's just a gift from Mr. Moog.

~~Mr. Shibley: Well I thought it was -----~~



Tape H - 1980 follows

Aug. 30/73
3.55-4.00p.m.
B.A.

H-1980-1

~~Mr. Genest: He don't agree with Mr. Shibley.~~

~~He don't agree that it is just a free gift.~~
Mr. Shibley: I thought it was of common agreement that the preliminary specification provided for a lay-in ceiling, and Hanscomb Roy's first report came ~~out~~ out with a figure of some \$780,000 for that item, and that when Canada Square ^{then} met with them on May 17 and following, they then voluntarily assumed the cost of a much more elaborate ceiling.

Mr. Genest: I don't want to start a discussion of *the today*

Mr. Shibley: That's Mr. Moog's position.

Mr. Genest: but I think ~~when~~ *who will be, I understand,* Mr. Candy, ~~he~~ recalled,

~~he~~ will have something to say about that, that the specification as it was, it wasn't possible to fit in other specifications with it, so that there was room there. Apparently, it is not just a free gift.

Mr. Shibley: Well, you are just pointing up the third situation, Mr. Renwick, is where you get the final ~~the~~ plans and there is not a complete black or white situation in relating ~~these~~ final plans to the preliminary plans and specs, and in respect of which final plans ~~there~~ might very well be a debate as to for whose account the work in question is to be charged.

Mr. Allan: Mr. Chairman, I don't think ~~that~~ the approval of the plans ~~are~~ necessary in the general construction of the building, not necessary to decide who pays for things, but it seems to me that the final plans will indicate, for instance, the installation of air-conditioning, and I think that these will need to be approved by Hydro. They are really the plans of the installation, not with any regard as to who is ~~going~~ ^{going} to pay for it ~~because~~ because it is recognized in an instance like that it is Canada Square who are going to pay for it, but really, the construction, the final plans dealing with the construction of the building, I think the approval of those ~~plans~~ plans is important.

Aug. 30/73
3.55-4.00p.m.
B.A.

Mr. McCallum: Mr. Shibley, I think Mr. Allan is right. I think maybe the committee haven't seen paragraph 10 yet, and when they do I think they will be right on his team.

Mr. Shibley: Okay.

Mr. Henderson: Mr. Chairman, might Mr. Shibley or Mr. McCallum, or someone, give us an idea of why the difference occurred already with respect to the sprinkling system. That might clear us up quite a bit as we go along.

Mr. McCallum: You ~~are~~ going to get that from Mr. Candy, but let me help you. I started off to tell you, and as Mr. Shibley quite correctly said, "You are no architect", and I am sure not; but I have some idea of the practical side of it because I have been talking to them. There came a time when they were going to, for instance, consider this ceiling, which I started to tell you about. They had to put a ceiling around a curved building, just like the City Hall. The problem was how they were going to put, I think they call them, the joists, across to make them, as it were, radiate out. That lies on the square. There is no way you can fit that into a curve without being ugly and hard to do; and when that was brought to their attention that they had suggested in the specs something that would sit out on the square and that that was going to look like heck, and in addition to that, wasn't going to work efficiently, it was agreed that it was never intended that that would happen, ^{and} so, as I have been trying to make the point, within the intent and framework, Mr. Moog said; "You are quite right, Mr. Candy, what won't work, we have to do it the other way around and if ~~you~~ it has to cost more money it has to because we sure can't try ~~it~~ and fit that into a half moon". That is the sort of thing that happened.

Mr. Allan: Mr. Chairman, regardless of the cost, it seems to me that Hydro have to approve that plan.

Mr. McCallum: Oh, yes, I am sure Mr. Allan is right, or paragraph 10 doesn't mean very much.

H-1980-3

Mr. Chairman: I think the point that Mr. Shibley was trying to make that the ~~the~~ preliminary plans mean something too and are not.....

Mr. Shibley: Mr. McCallum: *oh yes, and we agree with that.*
~~.....~~ as to cost.

Mr. Chairman: As to cost, and do set some outside bounds or outside fence.

Mr. McCallum: No question, Mr. Shibley, I am not taking anything away from what you have said.

Mr. Shibley: Hydro governs what are to be the final plans by ~~the~~ its right of approval. Who pays for the material in question, or the installation in question is, in part, at least, regulated by the preliminary plans and specifications.

Mr. Allan: I think that is a very clear explanation.

Mr. Renwick: Mr. Chairman, again I have a problem, and a very real problem. The documents, as I read them, seem to me to provide -- I just want to find out what the ~~general~~ guts of what we are talking about is. The documents, as one read them without knowing that the building was going up, and if one was then told that the approved plans had not yet been approved, one would assume that there is no building being built. ~~That is perfectly clear, it seems to me.~~

(Tape H.1981)

August 30, 1973
4.00 - 4.05 p.m.
M.R.

(Mr. Renwick)

...~~building being built~~. That's perfectly clear, it seems to me, from paragraphs nine and ten. The approved plans will not, as I understand it, be signed until the end. And then you look at the building to find out whether or not it's ⁱⁿ accordance with them. But doesn't that make paragraph 8 of immense importance in terms of on-going cost?

Mr. McCallum: Well, let me see if you agree with the statement you have just made. If you will take a look at number ten - skip over to that - will you take a look at that ~~statement~~?

Mr. Renwick: Yes.

Mr. McCallum: It says this: "Canada Square shall not, without the previous approval in writing of Ontario Hydro erect, construct, or place or permit or suffer to be built, erected, constructed or placed on the site or any part thereof, any buildings, erections or works other than the building described in the approved plans or such temporary buildings ... and so on.

Now, as I read that, thou shalt not put anything there except that which has been approved.

Mr. Renwick: That which is in the approved plans of which there aren't any approved plans.

Mr. McCallum: ~~28~~ Precisely.

Mr. Chairman: Well, the foundation work, have you not approved the plans for the foundations?

Mr. McCallum: I said that to the best of my knowledge, sir, and you'll have to get this from Mr. Candy, but to the best of my knowledge as I sit here, there has only been only one plan ...

Mr. Chairman: Inconsequential plan, eh?

Mr. McCallum: I just can't help you more than that. There are others that will be able to help you much more than I can.

~~xxxxxx~~

August 30, 1973
3.00 - 4.05 p.m.
M.R.

Mr. Renwick: And If I could refer to paragraph nine then, there is no such thing as going to the site and finding a copy of the approved plans?

Mr. McCallum: Couldn't do that if my information is correct because none have been approved yet, sir. That's right.

Mr. Renwick: My remark isn't - I'm saying is that ...

Mr. Chairman: ~~Already~~ ^{THEY ARE NOT KEEPING}

Mr. Renwick: Legal documents ~~don't~~ ^{ARE NOT} necessarily accord with the course of events but ...

Mr. McCallum: That's right.

Mr. Renwick: But it does mean, doesn't it, that paragraph eight is of immense importance with respect to cost variations in the course of the work?

Mr. Chairman: If these ...

Mr. McCallum: Yes, paragraph eight deals with two things, doesn't it? First of all, it deals with a period of time prior to approval.

Mr. Renwick: Which means for practical purposes as I understand it any time prior to the completion of the building?

Mr. McCallum: Maybe if the people sitting behind me are right and they don't comply with what I say paragraph 10 says, do you think you will agree with me?

Mr. Renwick: Yes. Well, a substantial - in other words the building will be substantially along before there is anything called ~~systems~~ approved plans.

Mr. McCallum: That's right. And at that stage they would seem to me to be substantially in ~~reach~~ ^{BREACH} of paragraph 10 because it seems to me if you are going to put something there you had better go and get the plans ^{for it} ~~are~~ approved before you put it there.

Mr. Chairman: Perhaps the plans would have been approved ...

August 30, 1973
4.00 - 4.05 p.m.
M.R.

Mr. McCallum: *There is a bit of conflict between*
say practise and the written word.

Mr. Allan: Mr. Chairman ...

Mr. Chairman: Mr. Gaunt wants to speak too. I think Mr. Gaunt is next in line.

Mr. Gaunt: Mr. Chairman, I just wanted to make sure that I had this clear in my mind. The preliminary plans and specifications are very important with respect to cost.

Mr. Shibley: Yes.

Mr. Gaunt: Mr. Shibley has made that point. I can see that. The instance of let us say Ontario Hydro wanting some additional feature outside of the plans or specifications - the preliminary plans and specifications, would be for the account of Hydro.

Mr. Shibley: That is correct.

Mr. Gaunt: In the event that what was requested wasn't included in those preliminary plans and specifications, am I clear that that would, in all likelihood, be for the account of Canada Square or would it be open to question?

Mr. Shibley: I think it is open to negotiation at that point.

McCallum: /
Mr. ~~Shibley~~ At that point, if I can assist Mr.

Gaunt, at that point you haven't paid sufficient attention to the words "within the intent and framework" of the preliminary plans. Look, you started off with preliminary plans that weren't all-embracing. So you could hardly say that there was going to be any change from the preliminary plans Hydro had to pay for it.

The basic theory was "we're going to build within an outer framework of those preliminary plans and there's going to be all kinds of highly detailed plans of parts of the building that will be constructed. If those things that come through on those detailed plans come through within what we say is the intent and framework of those preliminary plans, that will all be to the account of Canada Square.

H-1981 - 4

August 30, 1973
4.00 - 4.05 p.m.
M.R.

(Mr. McCallum)

"If they bulge outside that intent and framework,
then Canada Square ^{CAN} say you know you are asking us to build
a building that we never really contemplated at all. At
that point you'd better start paying yourself."



H-1982 to follow

Aug. 30/73
4.05 to 4.10 pm
DT

(Mr. McCallum)

~~you are asking us to building build a building that we never really contemplated at all. At that point, you had better start paying yourself.~~

Mr. Shibley: Mr. McCallum --

Mr. McCallum: Is that the sense of what you are getting at?

Mr. Gaunt: Yes, so it is the intent, within the framework of the preliminary specifications.

Mr. McCallum: That's what the words are used.

Mr. Shibley: I might say however, Mr. McCallum, that my understanding of the issue of including, for example, the carpeting and the sprinkler in version 2 of the Hanscomb Roy report at the instance of Mr. Candy is that -- and I think Mr. Renwick has put his finger right on it -- this clause 8 is a very key clause. Mr. Candy was interpreting this clause as entitling him to include those items, whereas in fact because carpeting and a full sprinkler system were covered specifically by the specifications, preliminary specifications, he could not do so.

Mr. McCallum: Well, what he did or why he did it --

Mr. Shibley: He is misreading his entitlement under -- he may ^{be} misreading his entitlement under paragraph 8 in attempting to include carpeting and full sprinkling.

Mr. McCallum: He might have. I certainly agree with you he might have.

Mr. Shibley: I might just tell you, Mr. Renwick, and members of the committee that I think Hanscomb Roy identify the problem as being just that. It's an interpretation of clause 8 which is causing a problem, a problem of interpretation.

Mr. McCallum: Well, 7 and 8, I guess. There will always be a problem of what's within the intent and framework of the preliminary plans. The sketchier they are, the more problem you will have in determining them.

Mr. Renwick: Let me ask --

Mr. Chairman: Mr. Allan and then Mr. Renwick.

Mr. Renwick: Oh, sorry.

Mr. Allan: Mr. Chairman, I was just going to indicate that my understanding of the approval of the final plans would be in stages. *Mr. Genest: That's right. Mr. Allan:* Not, as Mr. Renwick suggested, that when the building was finished then you would approve the plans. I would think that as they went up, as the building went up, that plans having to do with the part that was being constructed should be approved before the construction.

Mr. McCallum: Sure, that's what that paragraph means.

Mr. Chairman: Well, that was the point I was trying to make and I think they might have been approved if this committee hadn't been sitting.

Shibley
Mr. Genest: No, no, no. *job* The ~~change~~ had nothing to do with it.

Mr. Chairman: Well, I think some of the time --

Mr. Shibley: Mr. Chairman, I don't think it was the intent throughout that the plans be progressively finalized and progressively approved and I don't think there is any variation from that and I think Mr. Moog has said -- he is not here so I will say it for him -- that, for example, even after having constructed some of the foundation areas, by reason of changes in the planning for the plaza area and the podium area, they have had to tear out work and rebuild it at the cost of Canada Square to effect the changes in design that took place when the plans were being made final. So that this is a very much of an on-going process and that's part of the development concept.

I think that it is important for the committee to understand that, that one of the reasons that Hydro went this way, once they decided to abandon the plans for the original ~~plan~~ *building* and those plans took some time to make ~~a~~ final -- I think they took a couple of years, if I remember -- once they decided to abandon that set of plans, if they ~~had~~ had decided to completely revamp their plans and go the tender route by having architectural drawings and specifications made, with all the details required to put them out for tender, then they would have been delayed on their own estimate, I think, by 9 months. I think it a very optimistic period of delay myself and that's what Mr. Moog and I were in agreement on, that it would probably have been a much longer delay before they could

H-1982-3

Aug. 30/73
4.05 to 4.10 pm
DT

(Mr. Shibley)

have got new plans done, had them tendered and contracted for in the ordinary way. So rather than suffer that delay, was one of the factors weighing upon Hydro in going the developer route and, of course, in order to avoid delay, you have to contract without final plans and go it the way ~~the~~

(H-1983 to follow)

Aug. 30/73
4:10 - 4:15 pm.
M.S.

(Mr. Shibley)

~~...and even in order to avoid, have to~~
~~contract without final plans and in the way this~~
document is drawn.

Mr. W. Hodgson: It's not necessary, Mr. Shibley, too, ~~do~~ even after final plans have all been drawn by the architects and you ^{go to} ~~put a~~ tender. Then, if you have any little change at all, it always costs the customer money. Plenty of money.

Mr. Shibley: It can be worse. It can even be worse.

Mr. W. Hodgson: I favour this route over the final plans that had been approved prior to putting a shovel in the ground. With the experience I have had on several building projects, such as the hospital and county buildings and the home for the aged up in the Region of York, we've always paid through the nose if we wanted just a little change.

Mr. Shibley: I think, Mr. McCallum, I'll ask you this question. The developer concept relies very, very heavily upon the good faith of the parties to the agreement, both sides. Particularly, the good faith of the developer who will be called upon to make these changes without added cost.

Mr. ~~McCallum~~ McCallum: There's no question that the whole developer concept relies very much on the person with whom you're doing business. Because if that person says, "I've got you," as it were, and he fights you all the way up, the developer concept breaks down. This is a concept that's being used a great deal in business today. It's become very much in vogue, ^{and} ~~in~~ many big companies are using the same idea that you're watching here. Which is,

Aug. 30/73
4:10 - 4:15 pm.
M.S.

(Mr. McCallum)

in effect, to ~~make~~ let a man start building your building, and do your detailed planning on top of your preliminary specs as the building is going up. And you've just, for the last half hour, sir, been pointing out to this committee very minute ideas, or what I say are perfect examples, of how, if you haven't got the right man on the other end of the deal, you're just in ~~the~~ nothing but trouble. If that man co-operates, you can have a very successful project. And that's why they don't put that sort of thing out to tender, because tender gets you anybody who gives you a price. The theory is that you should pay more attention to your man, and if ~~you~~ you'll look around this city there are places where you'll see buildings that have been built by this process. Where they picked their man and they didn't pay any attention to contexts or anything else, because the relationship depends on the man. I'm looking at the Star reporter; I'm reminded of the Star Building. The Star Building was built this way by this process, and they went out and they selected a man in whom they had tremendous personal confidence. And I'll bet you they're very satisfied with what he did for them, too. But that just happens to be one I know of.

Mr. Shibley: All right. Now, if we might return to the document.

Mr. McCallum: If they aren't, I'm sure you'll see in an editorial how much they hate ~~wait~~ ^{it}!

Mr. Shibley: He was on the tour this morning, too. I want to return, however, to paragraph ~~eight~~ eight. Because I don't want to ~~lose~~ lose the emphasis and thrust of Mr. Renwick's question to you, Mr. McCallum. That this concept, what we've been discussing in broad terms, makes the provision of paragraph eight extremely important, in

(Mr. Shibley)

terms of what this building ultimately will cost Hydro, in the sense that if the changes fall beyond the sphere of what is within the preliminary specifications and the developer says, "well, I'm not going to pay for that," that's going to be added to the account of Hydro.

Mr. McCallum: Yes. Or they just back off and don't request it. The initiating factor is Hydro say, "this is what we want." *What follows then* _____

Mr. Shibley: Well, taking the sprinkler system again. It seems to have added, I think, a half a million dollars to fully sprinkler that building. And if the building now is to be fully sprinklered and because it's specifically dealt with in the preliminary specifications, this building actually is going to cost Hydro that half million dollars for its own account. And then so on, as additional items like that crop up.

Mr. McCallum: Well, let me say this, Mr. Shibley. If there was any hope in Hydro's breast that it wasn't going to cost a half a million, after hearing you expound the other side of the question, I'm sure they'll have some trouble with Mr. Moog now!

Mr. Shibley: I'm only using it as an example ---

Mr. McCallum: Thank you very much!

Mr. Shibley: I take the position of ---

Mr. Allan: ..(inaud)...

Mr. Chairman: I bet he is.

Mr. Shibley: Well, no I'm not. Because apparently it's been made an issue of already. ~~I think~~...

Tape H 1984 follows

August 30/73
4:15 - 4:20 pm
CA\

H-1984-1

~~(Mr. Shibley)~~

~~And not because apparently it has been made an issue already~~

Mr. Walker: *It'll be there cost after today!*

Mr. Shibley: Well no, *if* I think you look at version #3,

Hanscomb Roy have acceded to that position in that evaluation. They have acknowledged to Canada Square that the sprinkler beyond certain areas is for the account of Hydro, so we haven't derogated one bit from the established position.

However, if you go on. As I say I don't want to.. I think these examples have been good in the sense of understanding the importance of paragraph 8. Would you carry on Mr. McCallum.

Mr. McCallum: Yes, I think probably we have said to paragraph 8; everyone will have noticed that it deals really with two things. It deals with the matters which are outside the intent and framework of the official plan and which it says Hydro are going to have to pay for. And you will have noticed that it also deals with any changes that Hydro want ~~being approved~~ in approved plans. That is the sort of thing that comes about as a result of the tender system; *the same sort of thing,* ~~and~~ you have approved plans and you want changes so you pay for them, and that is what this section says.

Mr. R.D. Hodgson: In other words if the specs are different than the approved plans that it would cost Hydro if there are any changes made in the spec, that would be different in ~~the~~ *the* approved plans.

Mr. McCallum: The specs? I am not so sure you mean to say that do you sir? If what they want is outside the approved plans then if it ~~costs~~ costs more Hydro pays it, if it costs less this paragraph says Canada Square gives it to Hydro. They can ask, there are two types of..

Mr. Shibley: Mr. McCallum, again, isn't it the case where you start with preliminary plans, then let us say they have done final plans for *the* foundation, and those final plans are approved by Hydro as per the various paragraphs, and then further changes are required by Hydro vis a vis those approved plans, those changes

H-1984-2

(Mr. Shibley)

will be for the account of Hydro.

Mr. McCallum: Provided they cost more.

Mr. Shibley: Yes.

Mr. McCallum: If they said, change it ~~to~~ something that isn't then..

Mr. Allan: But Hydro isn't going to do that.

Mr. McCallum: Well I would hope not.

Mr. Allan: They are going to be sure before they approve them that it is all right.

Mr. McCallum: Exactly.

Mr. Renwick: Mr. Chairman, I would just like to ask Mr. McCallum ~~as an expert~~ as an expert, from his general experience in this that there is nothing unusual about these clauses with respect to this particular contract. They would be normal clauses to the extent that one can say ~~that~~ there are such things in similar contracts.

Mr. McCallum: With that limitation, yes, I think they are normal clauses. They are designed to contemplate and to reflect the very thing that we have been talking about. And I believe them to be the sort of thing that others use.

Mr. Renwick: They were not a matter ~~of~~ of special detailed negotiation so far as yourselves and counsel for Canada Square were concerned?

Mr. McCallum: No, I don't recall any detailed negotiations with respect to those clauses.

Mr. Renwick: Right. Thank you.

Mr. McCallum: Now we have referred to paragraph 9. I don't think you need to look at it any more.

Paragraph 10; I think we have made that point.

Paragraph 11 is perhaps just of interest to you. You will see that Canada Square were compelled to engage and use ~~the~~ the services of certain consultants. And I think, Mr. Shibley, you probably spoke to Mr. Candy about that in the course of his evidence. I don't think I need to do more than draw the committee's attention to the fact that that is a part of the contract.

H-1984-3

(Mr. McCallum)

Paragraph 12; I think you need only underline the first two lines and you have got the gist of it. It says;

"Canada Square shall cause to be done and shall pay the cost of doing all things required for the construction and completion of the Building".

Paragraph 13 was one that isn't so important today because work has started.

Mr. Renwick: Mr. Chairman, could I just ~~re~~revert to paragraph 11 for a moment. This is the area where there is the overlapping between the old plans and the new plans with Gordon S. Adamson and Associates as consulting architects. Is this a significant addition of increased cost to Hydro because of Adamson being the consulting architect on this job, or is there any overlapping in connection with it?



H-1985-1 follows

August 30, 1973
4.20-4.25 p.m.
M.F.

H - 1985 - 1

(Mr. Renwick)

~~being the consulting architect on this job or if there any~~
~~overlapping in connection with it.~~ Because they were paid
how much under the -----

Mr. Shibley: Just under \$1.5 million.

Mr. Renwick: Yes.

Mr. McCallum: Which they in turn of course used to
pay off the people who acted as probably, Dick Law doing their
structural work and they had their mechanical people.

Mr. Shibley: The overall cost of the plans for the
first building was \$1.5 million. Gordon S. Adamson and
Associates were responsible in the overall for those plans.

Mr. Renwick: So that this is -----

Mr. Shibley: Now I think the purpose of asking that
they be consultants was to bring about ~~some~~ continuity in the
planning. Gordon S. Adamson having spent so much time they
had some precise understanding of the needs and objectives of
Ontario Hydro, ~~and~~ I think Mr. Moog has already given evidence
that they have made very valuable contribution to the design of
the plaza and podium area.

Mr. Allan: Mr. Chairman, I was just going to ask Mr.
McCallum if it wasn't more for the purpose of checking?

Mr. McCallum: Yes, I am going to reply that it is. I THINK
What happens here is that here is Hydro, and Mr. Candy in particular,
going to go ^{into} ~~to~~ business with Mr. Moog. Many of the decisions
here go to arbitration are going to be decided ^{by} ~~the~~ people like
Mr. Adamson. Mr. Candy has a great confidence in Mr. Adamson,
and has always had, and he has a first class reputation.

That sort of thing, his consulting engineers, his
mechanical engineers, these people he wanted to be first rate
and people that he knew who would be co_n_sulted by this organization
in construction. I suggest to you that Mr. Allan is right.
Probably the greater piece of it was he wanted to know who was

August 30, 1973
4.20-4.25 p.m.
M.F.

H 1985 - 2

(Mr. McCallum)

going to really be putting together the building, he wanted first rate people.

MR. SHIBLEY: OK. FINE.

Mr. Chairman: Mr. McCallum, the figure of \$1.5 million has been mentioned. Does that include the consulting advice that Mr. Adamson and his firm will be giving on the present building.

Mr. McCallum: No, no.

Mr. Chairman: That is all for past services, isn't it?

Mr. McCallum: All forgotten about, water over the bridge.

Mr. Renwick: I just wanted to make certain and I wanted to have the explanation made so that the record would be perfectly clear, that Gordon S. Adamson and Associates are not getting paid twice for the ~~same~~ same work, or being brought in because they are sort of good friends and were in on the first one and they should be in on the second one, and I think that ~~that~~ it would be possible, if someone was looking for it, to sort of make that kind of remark, and I want to make the record clear from the evidence that it appeared to me to be separate and independent responsibilities, one having been fully discharged by them and being asked to take on a separate and distinct responsibility under this agreement; and I wanted confirmation of that, but also from the point of view of Gordon S. Adamson and Associates.

Mr. Shibley: Mr. McCallum, on that score, in terms of the cost element of \$34 a square foot, the charges of Gordon S. Adamson would be included in the make up of that cost as part of the design cost?

Mr. McCallum: Yes, that is my understanding. Now, I suppose Mr. Allan's point is driven home when you read that this paragraph says that -

"The above consultant shall not be replaced or substituted for without the written consent of the Ontario Hydro".

August 30, 1973
4.20-4.25 p.m.
M.F.

H - 1985 - 3

(Mr. McCallum)

They were really insistent that these kind of people be involved in this building.

Now paragraph 12 I have referred you to. Paragraph 13 has to do with the construction of the building. Perhaps you should just look at this because it says:

"As soon as possible after the execution and delivery of this agreement" - drop down about three lines - "Canada Square shall begin and on a large scale to construct the building, and carry out the work with ~~due~~ due diligence and ~~dispatch~~ ^{dispatch} and complete the same ready and fit for immediate and full occupancy and use, subject to such extensions of time as are herein provided for, on or before the earlier of (a) the expiry of 36 months from the date of issue of the expiration permit, or (b) the expiry of 39 months from the date of execution of the agreement by both parties, all in accordance with the construction schedule".

~~Now if I could just say there that not only was there~~

Now if I could just say there that not only was there a firm price but, subject to some very practical considerations, that is a very firm date on which they are going to get their completion. ~~Paragraph 13 of the agreement~~

Tape H 1986 follows

August 30, 1973
4.30 - 4.35 p.m.
M.R.

(Mr. McCallum)

~~on which they are going to get their completion.~~ You'll notice over on the next page that matters out of the control of Canada Square allow them to have some extensions on the time but subject to that sort of thing they are fixed with a firm date.

Mr. Gaunt: When was the excavation permit

issued?

Mr. McCallum: I think it was in 1972.

Mr. Candy: First permit for the hoarding was

issued on November 10, 1972.

Mr. Gaunt: 1972?

Mr. Candy: Other permits for the excavation,

foundation and superstructure are being applied for as time goes on.

Mr. Shibley: Mr. McCallum, is there a penalty

clause in this agreement for payment of any sum in the event they fail to meet those deadlines?

Mr. McCallum: I don't remember one.

Mr. Shibley: I didn't find one myself and I'd

like to ask you what would be the consequence of non-compliance by Canada Square with paragraph 13?

Mr. McCallum: I don't know.

Mr. Shibley: Normally there would be provision

would there not, for a payment of so much per day by ^{way} ~~way~~ of penalty?

Mr. McCallum: No. No. I'm sure that would scare

anybody off. What is involved as you know is that Hydro are going to on the strength of this and taking their own changes on acts of God and other matters, going to terminate leases all over the city. This building is intended to relieve them from heavy obligations and make arrangements to let other people in. The chain reaction will be terrific. How you could possibly estimate or make any idea of the kind of damages you will suffer - I don't think it would be a very practical ...

August 30, 1973
4.30 - 4.35 p.m.
M.R.

Mr. Shibley: Well, that is what bothers me about the clause, if I may say so, with respect, to the draftsmen. There doesn't seem to be any formula laid down whereby without resorting to litigation the compensation to Hydro could be settled by formula, ^{SHORT} ~~instead~~ of coming to some kind of an agreement at the time. But let us say that Canada Square took three months longer than anticipated and that that delay did not fall within the ~~the~~ exceptions of ~~paragraph~~ paragraph 14, how does this contract visualize the resolution of what compensation, if any, is made by Canada Square to Hydro for failing to meet what you call a firm date?

Mr. McCallum: Like most agreements when two parties make promises and one doesn't live up to his promise, the other has a right of action against him. It contemplates that kind of a remedy.

Mr. Shibley: Did you not at any time consider a formula payment instead of leaving it because would you not agree with me, it's extremely difficult to prove out the full amount of the damages in that type of a litigation? It's an extremely awkward type of litigation to conduct.

Mr. McCallum: Well, it may be difficult. I don't think it's nearly as difficult as trying to find the damages from a gas explosion or something but however, ...

Mr. Shibley: I've been on that one too.

Mr. McCallum: This sort of a thing is straight business damages that are related to other contracts and deals that other people made and are provable and are usually committed to writing. There is, therefore, that aspect of it.

Now, to answer your first question as to whether we discussed it. I did not. ~~What~~ Whether Mr. Houser and Mr. Moog's lawyers did, I can't answer.

Mr. Shibley: Okay.

August 30, 1973
4.30 - 4.35 p.m.
M.R.

Mr. McCallum: It was not brought to my attention.

Mr. Allan: Well, Mr. Chairman, don't you think that this being a proposal is quite a different situation than a contract? It's very easy on a contract because already written into this is a penalty, on the Canada Square, if they don't complete on time.

Mr. Genest: That is right.

Mr. Allan: There is a penalty of interest. There is a penalty of lack of revenue so that - mind you, Canada Square have - they meet penalties if they don't meet this on time.

Mr. Shibley: Well, I realize they suffer losses also, Mr. Allan ...

Mr. Allan: Yes.

Mr. Shibley: ...but what is concerning me are the losses of Hydro, which are contemplated to be covered by this clause.

Mr. Genest: Mr. Shibley, are you saying that there is no right to damages?

Mr. Shibley: No, I am not saying that. That's my worry about this ...

Mr. Chairman: Damages aren't spelled out.

Mr. Genest: Sometimes better not to.

Mr. Renwick: ...this matter, Mr. Chairman, doesn't concern me. There are enough countervailing pressures on Canada Square to get the thing built to ...

Mr. Shibley: Okay, go on then, Mr. ...

Mr. Chairman: Just one comment in view of what we have been saying earlier, Mr. McCallum, 13(b), you said that these are definite outside dates - 13(b) - we don't know when ~~that~~ ² THAT EXPIRED, DO WE?

Aug. 30/73
4.35-4.40p.m.
B.A.

H-1987-1

(Mr. Chairman)

~~said that these are definite outside dates. 13-B, we don't know when that expired, do we?~~

Mr. McCallum: Oh, but, Mr. Macbeth, I think Mr. Shibley isn't, I am. I say it was the 1st November and I have been trying to persuade him. It's a nice go but I think I am pretty satisfied in my own mind where I stand.

Mr. Genest: Mr. Chairman, perhaps it might be useful for me to point out, ~~I am sure Mr. McCallum will~~ ~~I am sure Mr. Macbeth~~ while it occurs to me, the ground lease section 204 ~~of~~ the ground lease, gives the right to Canada Square to terminate ^{for} Hydro to terminate in the event that Canada Square should fail to proceed with the ~~erection of the building~~ erection of the building in an expeditious manner. So there is that added protection.

Mr. Renwick: Mr. ~~Chairman~~ Chairman, I would like Mr. McCallum to know that I am relying on him, not only with respect to the general explanation but to draw out attention specifically to clauses in the agreement which were subject to specific negotiation, or resulting compromise ~~and~~ and where there was a real difference of opinion between Canada Square and Hydro, and I take it, up to this point in time, there hasn't been anything for practical purposes.

Mr. McCallum: No, I don't think there have been either, and I am perfectly prepared to accept that, ~~Mr.~~ Mr. Renwick, and do my level best to make everything clear to you. I may goof, and if I do I would like to refer you to the two letters, you'll remember, that we wrote to Hydro in which we referred to some of the ^{places} ~~places~~ ^{where} ~~where~~ we were arguing and not able to resolve the arguments, and that will be of some assistance if I forget to bring it to your attention, ^{And} ~~And~~, in ~~addition~~ addition to that, I will try and make a note ^{that} ~~when~~ ^{when} I get back here, to be sure that ⁱⁿ ~~anything~~ ^{anything} I have said today, that I have covered where we were ~~arguing~~ ~~arguing~~ at the time, because I think that is helpful for you to make a judgement.

Aug. 30/73
4.35-4.40 p.m.
B.A.

Mr. Shibley: I think in that respect, Mr. McCallum, you might make a note, not only to alert the committee to discussion as between yourself and representatives of Canada Square, but discussion as between yourself and representatives of Hydro respecting the terms of the contract.

Mr. McCallum: All right. I argued with them so much they as they just told me they wouldn't accept this or they wouldn't accept that, as the case may be, but I know what you mean *and I'll try and*

Mr. Chairman: Mr. Genest is letting you down. He was supposed to be making these notes for you.

Mr. McCallum: He is talking in behind. He's got our roles mixed up again.

Mr. Chairman: Well, let's get on.

Mr. McCallum: Just a second now, because I am writing for myself. Okay, we will get on.

I don't think there is much I ^{need} say about 14. That has to do ~~about~~ with delay and how ^{they'll settle} much delay there was, and finally it would get down to arbitration, I don't think that is of much importance.

"Finishes," 15, if you will see in the third line ^{"Finishes."}

"The construction shall be in accordance with the approved samples," ^{that} ~~and~~ has to do with finishes ^{too} and in a sense ties in with what we were talking about earlier.

Paragraph 16, I don't see anything in that to bother you.

Paragraph 17 is a typical clause where it says, in effect, that Hydro can request a re-examination of questioned work, and if you will look at the last four lines; "If the construction of such questioned work is found not to be substantially in accordance with the approved plans, Canada Square shall pay such costs and shall not be entitled ~~to~~ to an extension of time for completion of the building."

Paragraph 18 - condemn and require. That is the clause that says, "The representative of Ontario Hydro may at any time and from time to time condemn and require, and thereupon Canada

(Mr/ McCallum)

shall attend to the prompt removal from the site of all materials and construction failing to be substantially in accordance with the approved plans and Canada Square shall promptly replace such condemned materials and re-execute such condemned construction in accordance with the approved plans and ~~xxx~~ without expense to Ontario ~~Hydro~~ Hydro. " Now, I don't think I need say anything more about that.

Paragraph 19 is, I think, one that the committee have heard about and Mr. Renwick has suggested I should spend a moment or two speaking about this one. Before I read Paragraph 19, what Paragraph 19 ~~xx~~ is saying is ~~is said~~.

(Tapes H-1988 follows)

Aug. 30/73
4.40 to 4.45 pm
DT

(Mr. McCallum)

~~19.000.000~~ -- is said -- because in the beginning we wanted Canada Square to have a performance bond to guarantee their obligations under this agreement to build that building; and they wouldn't go for it. They just said "no" and they gave reasons such as it was too expensive, it was going to cost a lot of money and they didn't need it and they were financially ^{able} to build the building and generally "no" for whatever reasons they gave.

We were trying then to find some way that we could see how close we could come to being able to ensure that the building would be constructed and we were at pains after having obtained this arrangement to report ^{that} ~~back~~ to the commission as not being a performance bond and they are ^{not} people who are unaware of what performance bonds mean, but explained to them what we thought this would do and how it was this or they had to say to us -- we are not going to sign, you go back to Canada Square and tell them so. So in that sense, because you asked me to bring that to your attention, this paragraph was born.

Now, what's behind this paragraph is this, that Canada Square must put in to the building at least \$2 million of its own money. You heard Mr. Moog say yesterday, or whenever it was, not \$2 million but \$6 million he is putting in of his own money. He hasn't used bank loans to date. In any event, this says 'you have to put in at least \$2 million of your own money' and then it goes on to say that Canada Square can't borrow any money during the construction and use this land and ~~the~~ this building as a security for that loan until it has a valid commitment for a take-out?

Mr. Walker: What do you mean by a take-out?

Mr. McCallum: I will just tell you about that in a minute. And in addition to that, it can only borrow money for money actually used and ~~now~~ paid out in the construction of this building minus \$2 million. Now, I will come back. That's the sense as I see the whole ^{of} ~~is~~ this and its companion piece which is referred to in the ground lease. Will you just make a little note on that page -- if you say, "see also ground lease, definition page 3, interim charge", you will see where I am going.

Aug. 30/73
4.40 to 4.45 pm
DT

Mr. Shibley: Mr. McCallum, in deference

to Mr. Renwick's request to you, I would ask you to refer now to the position taken by Canada Square in the first instance respecting the disposition of this \$2 million as reflected in one of your own memorandum.

Mr. McCallum: I don't know if I can remember because, as you know, my girl got those ready and I haven't had a chance to read them ~~now~~ yet, but I think I can remember that initially --

Mr. Genest: Well what was the -- why don't you read the memorandum before you try to remember.

Mr. McCallum: An excellent idea. What's the date of it --

Mr. Shibley: Unfortunately it is in the file including undated memoranda but I think it is one of the very --

Mr. McCallum: Here, find it. Do you know what it looks like?

Mr. Shibley: It is the very first page, I think.

Mr. ~~Chairman~~: That is one of the best exchanges today. ^{DATE}

Mr. Shibley: It is the part that says "they say mortgage our land for interim and thus get out their first \$2 million and this interim mortgage can be for any sum even if proceeds are not to be used on this ~~job~~ job," and so on. As I say, Mr. Renwick has asked you to point out points of difference.

Mr. McCallum: Well, Mr. Shibley is helping me a great deal. I have a memo which, as he pointed out, is undated but I will read you this part. I have written - it obviously has to do with negotiations with Canada Square. I have written this: "They say - mortgage our land for interim and thus get out their first \$2 million and this interim mortgage can be for any sum --"

(H-1989 to follow)



August 30, 1973
4.45-4.50 p.m.
M.F.

H - 1989 - 1

(Mr. McCallum)

~~"mortgage our land for interim and thus get out their first two million, and this interim mortgage can be for any sum even if proceeds are not to be used on this job.~~

"We say such interim mortgage should only be good for the money actually spent on the project minus two million dollars. Bank is his financier, therefore mortgage is just collateral, and bank would get paid and trade and material would not". I think that is the part that applies.

Mr. Shibley: Yes, that's right.

Mr. McCallum: And it does help my memory, when we were trying to arrive at a way in which Hydro would be protected our thought was that if they had to put two million dollars of their money out of their assets, so that it couldn't be got for anybody else, add then use that money in the construction of this building, then they had two million dollars they hadn't borrowed from somebody else was stuck in and they weren't using our land or anything else as security. That was for starters.

Then we said to ourselves the next thing to do is to make sure that they don't use this land to get any interim financing, unless the money that they get from the interim financing goes right into the product so that there won't be anything on that land which hasn't been paid for and which has got security in the land. So that what we ended up doing was to say we will let you borrow against this land after you have started, and after you have spent two million dollars, but only to the extent of moneys which are paid in respect of that building minus two million dollars, because never at any time are we going to let you get that two million dollars out, it has got to stay in until the end.

Mr. Shibley: Yes. Canada Square's position initially was they wanted to get their two million out once they got under

H - 1989 - 2

(Mr. Shibley)

way with construction, and this was a compromise.

Mr. McCallum: That's right. That is exactly what the memo says.

Mr. Shibley: And it was also a compromise with respect to the fact that Hydro was not being provided with a performance bond.

Mr. McCallum: Yes, that's right.

Mr. Shibley: This is in lieu of a performance bond.

Mr. McCallum: Well, it is to give Hydro the assurance, that we were able to get at least from these people that-----

Mr. Shibley: There is one element of this clause that I would like your comment on, and that is that if Hydro's property can be charged with the interim financing to the limit indicated, and if there is default on the part of Canada Square, then Hydro would be obligated to make good on that interim financing, is that correct?

Mr. McCallum: Yes, and Hydro would have this view: Supposing you had put the money up and you had the mortgage and I was Hydro, I would be saying to you, "Look, you have got a mortgage on there for \$5 million. Now as to \$2 million it is not it is not security at all, as you can see, and you ^{will} have to prove to me that the remaining three -----

Mr. Shibley: I understand.

Mr. McCallum: ~~Was~~ ^{has} spent on that site or it is not security for that either."

Mr. Shibley: I realize. Now what is concerning me, however, is that the cost of the interim financing would also be assumed by Hydro without any limitation on the interest which is being charged therefore. In other words, the clause does not seem to put a limit on the rate of interest to which Canada Square might submit as part of its interim financing and for which interim financing it can pledge Hydro's building. Is that correct?

Mr. McCallum: That's right, yes. And that comes

August 30, 1973
445 - 4.50 p.m.
M.F.

H 1889 - 3

(Mr. McCallum)

about as a result of two things.

First of all we couldn't figure out a way that we could find out, if they were determined ~~how~~ to keep it from us, the true cost of financing. Whether they would put a mortgage on for \$5 million and take \$4 million, or something under it, and in effect they have got a bonus of one million right off the bat; and secondly we said to ourselves, we will give it to them another way. We won't let them borrow a nickel and therefore get us into that position, until they have a bona fide take-out.

Now you asked about a take-out. What that means is that they have a firm commitment for a total mortgage, ~~and that~~ as they say they have today, for instance. They can't borrow any money until they have that, and then you have got proper bridge financing, because at that point you have got a man going to whoever he is going to borrow on the security of this, as Mr. Shibley is saying, who goes in and he has got in his hand a firm commitment from a company that says ~~I am going to let you have, as soon as you have got this building up, -----~~

Tape H 0 1990 follows

H-1990-1

(Mr. McCallum)

~~Who goes in and he has got in his hand a firm commitment from a~~
~~company that says~~ "I am going to let you have as soon as you have
got this building up \$45 million for 30 years at 8 per cent". At
that point you don't have to pay. You are just not going to have
to pay when they take a look at that deal; 27 per cent or some
such thing and hidden bonuses and others; for the money. And you
can certainly rely, or at least we thought we could put large
weight on the proposition that they are going to get their money
then as cheaply as they can if they needed any further.

The fact of the matter is I believe that at that time and
under those circumstances you have probably got bank financing, and
you are just not dealing with the ~~user~~ usurers.

Mr. Shibley: In this case I believe it is the Bank of
Montreal which is providing interim financing according to the
evidence we have seen.

Mr. McCallum: I think the Bank of Montreal have told us
they intend to get, but my understanding is they haven't drawn down
a nickel from them yet.

~~Mr. Shibley: Is that not so?~~

~~Mr. McCallum~~: They haven't taken a nickel yet.

Mr. Shibley: They have used their own funds.

Mr. McCallum: That's right.

Mr. Shibley: All right.

Mr. McCallum: So that's its reasonably ~~academic~~ academic.
I just don't think that that is going to happen under those
circumstances.

Mr. Shibley: Okay. Will you carry on then?

Mr. McCallum: Now paragraph 20 on page 14, you don't need
to do other than underline the two first lines. I don't think the
rest of it will really bother you.

At the bottom of the page, paragraph 21, if you just
underline "Canada Square shall insure", that is the sense of it; they
carry the burden to do it.

~~XXXXXXXXXXXX~~

H-1990-2

(Mr. McCallum)

Paragraph 22;

"Canada Square shall make good any damage to the roads, fences, sidewalks and lands adjacent to the site...". Not more to it than that.

Paragraph 23;

"Canada Square shall not use or give others the right or permission to use any portion of the site, the Building or any other erections thereon as an advertising station...".

Paragraph 24;

Mr. Walker: What about Canada Square.....

Mr. McCallum: Well it says unless you get our permission, and when I look at those things on top of the towers that you are talking about, those pretty signs, I guess they are so well done that they must have got permission. But I know what you mean. I can think of other people who wouldn't mind to get that exposure.

Mr. Shibley: You have been exposed to Mr. Moog.

Mr. McCallum: Well you are quite right. I can't deny that. I sure have been ~~exposed~~ exposed to him..

Paragraph 24; it really just simply says;

"Canada Square will permit Ontario Hydro, ~~and~~ at all reasonable times to enter upon the site during construction" to do whatever they have to do.

Paragraph 25, the second line;

"for the purpose of vehicular access.... shall use... only such accessway or ways ~~as~~ have been approved by the City of Toronto's Commissioner of Buildings".

About the middle on page 17.

Paragraph 26;

"Canada Square shall not sell or dispose of any earth.... from the site".

Now, starting at paragraph 27, you get into a better description of the deal.

Mr. Chairman, how about a recess.

Mr. Chairman: Yes, sir, if you are ready for one, although I hope we will stop about 5:30 today.

H-1990-3

Mr. McCallum: I do too, but let's have a break.

The committee recessed at ~~4~~ 5:50 p'clock, p.m.

H-1991-1 follows

Aug. 30/73
5:05 - 5:10 pm.
M.S.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee resumed at 5:05 o'clock, p.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order, and ask you to carry on if you will, Mr. McCallum.

Mr. Renwick: Mr. Chairman, I have clauses 27, 28, 29 and 30 deal with that net lease question. 31 with the leaseback. The only clause that I'm interested in, if this would speed it up at all, is clause 32, which is the building lease one.

Mr. Chairman: Frankly, I like the way Mr. McCallum was proceeding, at least for a little while there. Just commenting what each paragraph had to deal with. So, if he'll just carry on that way, but maybe not spend too much time unless somebody asks you a question.

Mr. McCallum: I'll go faster. Sit back then, and let's go. If you'll just start at number 27, you can mark in the margin there "net lease". Because, as Mr. Renwick has pointed out to you, 27, 28, 29, 30 are going to deal with the net lease.

Now, the net lease, you don't need to do much other than to note on that paragraph 27. It's for 30 years, you'll see that. Then at the bottom of the first paragraph on page 18, you can underline the words, "The Net Lease shall be executed and delivered by Ontario Hydro and Canada Square prior to Ontario Hydro taking possession of the Building and the site."

Then, in paragraph 28, you'll find this business of the rent. And you should just underline the U.S. \$3.35. Now, you want to contrast that, because in your leaseback they picked up the foreign exchange difference

(Mr. McCallum)

by making it Canadian moneys. So, here you underline "U.S. \$3.35 ... on the aggregate rentable area of the Building..." "... plus U.S. \$25,000 for the recessed areas..." So, that the total rent payable under there is really \$3.35 a square foot plus \$25,000, all in ~~Canadian~~ US money.

Mr. Shibley: The \$25,000 was a negotiated figure.

Mr. McCallum: Yes, sir. Sorry. You're quite right bringing that to my attention. That was a negotiated figure.

Over on page 20, I don't think you need to pay much attention to anything until you get over to page 20.

Mr. Allan: Mr. Chairman, it states somewhere, I think that I saw that the rental is based on American funds. And if the American funds are at a discount, that the benefit then comes to Hydro.

Mr. McCallum: That's true, because -- it doesn't have to state it as such, but that's exactly what happens.

Mr. Allan: It isn't mentioned here then.

Mr. McCallum: No, but that is it, too. Now, if you'll just look at page 20 ---

Mr. Shibley: I'm sorry, Mr. McCallum. I think it will be of interest to the members who attended these buildings this morning to note on page 19, mid-way, "... the aggregate rentable area of the Building shall be the gross area measured to the inside finish of the permanent outer ~~build~~ building walls or to the glass line where at least fifty per cent (50%) of the permanent..." and so on. That's referable to the saving effected by the mechanical system that's intended. But you can go on.

Aug. 30/73
5:05 - 5:10 pm.
M.S.

Mr. McCallum: Oh, yes. You're quite right.
You're paying right out to the wall.

Mr. Shibley: Yes.

Mr. McCallum: That's quite right.

Mr. Shibley: Thank you.

Mr. R.G. Hodgson: It affects the net lease,
too.

Mr. Shibley: And it affects all of the leases,
yes.

Mr. McCallum: Well, sure, because you're
paying for that space.

The rental rate, if you just look down about
5, 6, 7 lines on page 20. ~~There's~~ "... the rental rate
under the Net Lease shall be reduced to the extent necessary
so that after such reduction the payments of rental thereunder
will be equal to the payments required to fully amortize
the permanent financing of the Building over its term...
provided however there shall be no reduction in the rental
under the Building Lease..."

Now, the whole of that really boils down to
something like this: if Canada Square borrows less than
\$45 million and, therefore, the payments are reduced on
the mortgage, then the payments under this Net Lease are
correspondingly reduced. But the payments under the \$4.84
lease, the building lease, are not. All that happens is
that the difference still goes to Canada Square. They get
\$4.84, but this lease is tailored to just pay off that
obligation. That's what Mr. Shibley brought to your
attention in the very beginning, do you remember? This is
what does it.

~~Mr. Shibley~~

Now, paragraph 29. And I think I'll just
read quickly, if I may, Mr. Chairman. Paragraph 29, this

H 1991 0 4

Aug. 30/73
5:05 - 5:10 pm.
M.S.

(Mr. McCallum)

has to ~~do~~ do with the order of registration. To heck with it. I won't read it, I'll tell you. The order of registration is as follows. If you want to make a note on the clean side of page 21. The first document to be registered is the ground lease. Second, net lease. Third, mortgage. Fourth, leaseback. Fifth, building lease. Now, what the rest of this paragraph on page 21 says is the maximum ~~amount of money that can be borrowed~~ that can be borrowed on the first mortgage, no matter how good Hydro's covenant is, and no matter how valuable the new building, is \$45 million Canadian, or, if the money is borrowed in the US, then the equivalent amount of American money on the date the money is taken down.

~~Now, just stopping for a minute. We're~~
~~building a.....~~

Tape H 1992 follows

August 30, 1973
5.10 - 5.15 p.m.
M.R.

(Mr. McCallum)

~~... then the equivalent amount of American money on the date
the money is taken down.~~

Now, just stopping for a minute: We are building a Canadian building. The limit on the borrowing is \$45 ^{million} Canadian; and then it says, in effect, but if you're going to borrow your money in the States, so you can't borrow more than U.S. equivalent of \$45 million Canadian. \$45 million Canadian is really what you are building.

Mr. Walker: In other words, what \$45 million Canadian will buy in the United States?

Mr. McCallum: Yes.

Mr. Walker: You are not saying that the equivalent being \$45 million in the States?

Mr. McCallum: No. No. Quite the contrary. *Okay, now.*

Mr. Allan: Mr. McCallum,

Mr. McCallum: Sir?

Mr. Allan: The last part of that paragraph - the draw-downs, the mention of the draw-downs in the American money. ~~There~~ ^{There} is no American money comes into the picture is there, until the building has been completed?

Mr. McCallum: Correct, sir.

This is what is called a "completion loan". This is not a progress loan, where you get it as you go up. It's very important that when you come to think about such things as liens ^{and so on} - we'll come to it in a minute. ^{No} ~~More~~ money is being paid ~~... so~~

Mr. Shibley: Is the appropriate place also to talk about the - when you talk about the liability for exchange, there was apparently debate as to whether, when they talked of the variation from par, whether that would be as from the date of making of the agreement or the date of the take-down?

Mr. McCallum: Yes.

August 30, 1973
5.10 - 5.15 p.m.
M.R.

Mr. Shibley: Is this the appropriate time to advise the committee that that was also a matter of negotiation?

Mr. McCallum: Yes, I can just reiterate what you've just said. It was a matter of negotiation and I had taken the position that it ought to be the date of the agreement, I guess it was, and the other side, through Mr. ~~James~~ Coles, said that it should be the date of the take-down and we had a good many discussions on that while they had to educate me, and finally again Mr. Nastich had to come down and take me by the hand and make me understand that what they were suggesting was perfectly appropriate.

Mr. Shibley: All right.

Mr. McCallum: Therefore, that we ought to take it from the date of the take-down.

Mr. Shibley: Right.

Mr. McCallum: But you are quite right, that was negotiated at some length because I was so dumb I couldn't get it through my head. That was the problem.

Now, on paragraph 30 - let's see if I can cut this down for you - I don't think there is much there. It commences on the lease date, but I don't think there is much that is involved there from your point of view.

Paragraph 31 deals with the leaseback and you'll notice that it says that the term of this lease ends one day before the term of the net lease. Well, that was really to prevent it being a complete wash, I think is the term, Mr. Shibley uses, or cancellation. This leaseback provides a vehicle to enable Hydro to pick up the foreign exchange risk. It turned out to be a very neat thing when we had come up with it, because it enables the foreign exchange risk to be picked up. One is payable under the net lease, it's payable in American dollars, and under the leaseback it's payable in Canadian dollars. It serves other functions as well, as you'll see.

August 30, 1973
5.10 - 5.15 p.m.
M.R.

(Mr. McCallum)

On Page 23, it really says something like this, —
the whole of that page, it ~~says~~ says if Canada Square gets
the commercial space under the leaseback by paying Hydro
\$6.00 a square foot. Let me just stop for a minute - remember
what's going on here - the commercial space in the building
which totals some - from memory - 84,000 square feet, we'll say,
that's going to be Canada Square's job, to be the proprietor
of that, if you will, and make of it what it will and Hydro
will participate with them.

So the deal Hydro made and it's contained here is,
"You pay us \$6.00 a foot for the whole of that space from day
one, whether you've got it rented or you haven't; you pay us
\$6.00 a foot for all the space on the upper concourse," I think
it is, and as you get it rented, if you rent it for more money
than \$6.00, we, Hydro, want 50 per cent of everything you get
more than \$6.00. That's on what they call the upper concourse
and it, I think, ^{63,000} 63,000 or 64,000 feet. That's their basic deal
on that piece of land ~~the~~ piece of ~~land~~

Mr. Shibley: Just before you go on: ~~I take it~~
~~that Hydro is committed to lease the~~

H-1993 to follow

(Mr. Shibley)

I take it that Hydro is committed to lease the whole of the office area

Mr. McCallum: Yes, sir.

Mr. Shibley: And that was also the subject of ~~some~~ negotiation as I remember some of the documentation. At one time, was it not contemplated that Canada Square should be responsible for some 200,000 square feet in terms of the sub~~let~~letting of that space ~~and~~ pending Hydro's needs therefore?

Mr. McCallum: Sir, it may have been, but this afternoon I don't have a memory of it.

Mr. Shibley: All right.

Mr. McCallum: Sorry.

Mr. Shibley: In any event, Hydro's obligation ultimately became one of paying rent on the whole of the office area --

Mr. McCallum: Yes.

Mr. Shibley: And with respect to the commercial premises --

Mr. McCallum: Yes.

Mr. Shibley: Could you outline to the committee what the situation is there?

Mr. McCallum: Yes, the commercial premises really divide into two sections, one I guess you could call the "upper concourse"; That's where they intend to have the shops and so on. The deal there is that Canada Square pay Hydro \$6.00 a square foot. I am just trying to get my thoughts straight. They pay them \$6.00 a square foot for that space. Then, it's theirs. They can turn around and rent ~~it~~ out the space to the various shopkeepers. As ~~they~~ they get that space rented, there is a participation deal whereby if they rent, we'll say, to a Woolworth's or something and if they get \$12.00, then Hydro would get 50 per cent of that additional \$6.00.

Mr. Shibley: Right...

Mr. McCallum: And --

Mr. Shibley: But the primary --

Mr. Allan: Can I stop you right there?

Mr. McCallum: Yes, sir.

Aug. 30/73
5.15 to 5.20 pm
DT

Allan:

Mr. ~~McCallum~~: Supposing they rent a part of that

space to the Bank of Nova ~~Scotia~~ Scotia for \$12.00 a square foot or \$15.00 a square foot and they rent some other space for \$5.00 a square foot, how is this commuted?

Mr. McCallum: Half of --

Mr. Allan: Computed, rather.

Mr. McCallum: Well, they still -- the \$5.00 a square foot is out of Moog's pocket. Tough luck. He pays us \$6.00.

Anything he gets more --

Mr. Allan: It is on an average.

Mr. McCallum: No, sir. Anything he gets more, as I understand it. Now -- that's a good question though. I had better have a look at the words before I just jump.

Mr. Shibley: Yes, it is.

Mr. McCallum: You have a bad habit of asking very precise questions.

Mr. Chairman: Mr. Allan is in this business.

Mr. McCallum: Yes, I know, and those of us ~~that~~ that listen to him appreciate it. I just thought I had better have a better look when he says things to me like that.

Mr. Shibley: You wouldn't like to comment, Mr.

~~McCallum~~ *Chairman!*

Mr. McCallum: Yes, it is average, Mr. Allan. It's the total rent received in respect of those 63 thousand some odd square feet. Anything they get more than \$6.00, we share in 50-50, but if they took one man at 5 and one man at 12, to answer you, it would be 17 divided by 2.

Mr. Shibley: Well, just pursuing that, if ~~I~~ I may for you, Mr. Allan, do I take it then that during the period of ~~vacancy~~ vacancy of any of that area that the failure of Canada Square to realize rental therefrom falls into the ~~average~~ averaging process and would preclude any participation in the rental of certain of the areas for more than \$6.00 a foot, or could preclude it?

Mr. McCallum: I am not sure I follow you. If what

(Mr. McCallum)

you are saying --

Mr. Shibley: Let's say that they only got, for the first five years, after completion, half of the area remained ~~was~~ vacant and the other half was rented at \$9.00 a foot, there would be no participation by Hydro in the surplus of \$3.00 because it shares the risks, so to speak, of the vacant area because of the averaging that's taking place. Is that right?

Mr. McCallum: No, ~~I think~~ I'm not sure you are right. Here I will read it to you. You get \$6.00 a foot, Hydro do and if you will look right in the middle of that ~~a~~ page, that \$6.00 a foot shall be augmented -- do you see that word "augmented"?

Mr. Shibley: Yes.

Mr. McCallum: "Shall be augmented in each year by the aggregate of one half of the amount, if any, by which the rental received in such year from sub^{tenants}tenants"--

Mr. Shibley: Yes.

Mr. McCallum: "Exceeds the aggregate rentable area of such space at \$6.00 a foot."

~~Mr. Shibley: Yes.~~

H-1994 to follow)

Aug. 30/73
5.20-5.25 p.m.
B.A.

~~(Mr. McCallum)~~

~~space at \$ 76.00 a foot.~~

Mr. Allan: That would lower the average.

Mr. McCallum: Yes. In other words, if you get the
feet

total rental area we will say if 63,500 and if that is multiplied
by six and you get more than six times 63,500 feet, 50 per cent
of it goes to Hydro.

Mr. Shibley: It amounts to the same thing. While there are
vacancies, Hydro is sharing in that risk.

Mr. McCallum: It amounts to the same thing, yes.

Mr. Chairman: But it can't go below the six.

Mr. McCallum: But Hydro can't go below six; they share beyond \$6.
the

Mr. Shibley: I am only talking about ~~the~~ surplus, ~~six~~.

Mr. McCallum: Yes, I realize that.

Mr. Allan: Now, explain the next two lines to us.

Mr. McCallum: Okay. From where I was?

Mr. Shibley: Yes.

Mr. McCallum: Well, the next one says the following:

Whatever fraction of \$40,000 - you are talking about another area,
first of all, Mr. Allan, you are talking about 24,000 feet that is
on a slightly different area ~~bank~~ that I think Hydro call the bank
space. Now, with respect to that, whatever fraction of - you get the
lesser of \$40,000, or, whatever fraction of \$40,000 that space actually
rented bears to the total space for rent. For example, if of the
total 24,000 feet available for rent they rent 12,000 feet, then they
have half the space rented and half not rented. Hydro get half of
\$40,000, or \$20,000. They get the lesser of \$40,000 or the ^{pro}portion
the fraction that is rented bears to the total available for rent.
Does that make any sense to you? Come back to my example.

Mr. Shibley: I am having trouble too. Well, this was
a negotiated item, also.

Mr. McCallum: It sure was.

Mr. Shibley: And what this has to do, really, is the area
to be occupied by the bank.

Mr. McCallum: Yes, bank or banks. Not a bank. The chance
of a bank I would think was zero.

Aug. 30, 73
5.20-5.25p.m.
B.A.

Mr. M Shibley: ~~Bank~~ Bank or banks. Now, 24,000 square feet; \$40,000 represents \$15.00 a foot.

Mr. Allan: No, a \$1.50.

Mr. Shibley: I am sorry, \$1.50.

Mr. Allan: A little more.

Mr. McCallum: Well, whatever it bears, I don't think you are going to be helped much by figuring out how much per foot. What they did there was, they for the longest time would give us nothing. The negotiations were - "Forget it, that's us, we are going to take the risk on these things." In fact, that was their attitude with respect to nearly all the the commercial ~~space~~ space. On this particular one, of all the things other than the so-called formula for the reduction of rent, I can't think of anything that was more hotly ~~more~~ contested than this. It resulted from my going to the commission with that first letter reporting, and saying to them, "I can't get Canada Square to agree to participate, or allow us to participate, in the rental that they get on that site," and they said to me, "Well, if they won't, then it's no deal." So back I went to Canada ~~Sqa~~ Square that day or the next day and said exactly that to them; "If you don't allow us to participate in the rents which you get from that site, then it's no deal". That got them talking and after the talking it led to finally getting an offer from them that they would agree to pay us \$40,000 for that space when they had it rented.

Mr. Shibley: It is a maximum.

Mr. McCallum: Yes, that is right.

Mr. Shibley: What is troubling both Mr. Allan and myself, I think, for one thing, is what does (b) really amount to? By example, can you explain (b), the alternative, because it is the lesser of \$40,000 or whatever?

Mr. McCallum: I gave this example, Supposing you have 24,000 feet available for rent, and supposing you have 12,000 feet rented. At that point, the Moog people would have to pay us 12 over 24 times 40.

Aug. 30/73
5.20-5.25p.m.
B.A.

Mr. Shibley: Okay.

Mr. Allan: In addition to the \$6.00?

Mr. McCallum: No, sir. This is a new space. That is

why I stopped early and said, remember I am talking about new commercial space. You see, there was 84,000 feet, sir, roughly, of commercial space. 64,000 - I may not be using ~~more~~ exactly the right figures, but ^{as Hydro remarks} about 64,000 is for shops and stores, and so on, ~~as Hydro remarks~~ they call it the concourse, or something.

That is the \$6.00 stuff where he has to pay ^{us} \$6.00, come what may.

~~The other he was holding out like to a mouse. He wanted that space for himself and whatever he~~

(Tape H-1995 follows)

H - 1995 - 1

(Mr. McCallum)

The other he was holding on like to a nugget, he wanted that space for himself, and whatever he could make out of it he wanted, that was his argument. That's to the remaining 24,000 ^{square} feet, and it was with respect to that remaining 24,000 ^{square} feet that he finally was pried loose of \$40,000, and the Commission said okay we will take the deal.

Mr. Allan: Is that included in the space that we pay rent for?

Mr. Gaunt: No.

Mr. McCallum: No, this is his space. He has got the whole space of some 84,000 ^{square feet}. Here I will give you the exact ^{figure} ~~figure~~ ^{on it}.

Mr. Allan: No, but he is leasing back the 63,000 ^{square feet}.

Mr. McCallum: No, he is not. Look, forget the leasing back and look at the whole of the commercial space as being Moog's. If you put the whole of it in your mind as being his and not Hydro's at all, and then think of it as follows:

As to the 63,000 ^{square} feet, it is Moog's and for that privilege Moog pays us \$6.00 a foot, and in addition to that he gives us 50 per cent of anything he makes more than the ~~land~~ \$6.00 a foot. Forget that, that is one piece of commercial space.

On another piece of commercial space that I think is about 24,000 ^{square} feet, he made the following deal: He said I will give you ~~24,000~~ \$40,000 or whatever fraction I get of \$40,000, according to how much of this site I get rented, and that's all.

Mr. Genest: Mr. Chairman, ^{and} Mr. McCallum, excuse me, I have a number of people here muttering who point out that maybe the only thing Mr. Coles agree~~d~~ with, the \$6.00 applies to the whole of the space. On one part of it we have a 50-50 participation; on the ^{other} ~~whole~~ part we have a maximum \$40,000.

Mr. Allan: That is a little more reasonable.

Mr. McCallum: That is quite right, Mr. Chairman.

I was looking at the bottom ~~end~~ end of the page and not looking

August 30, 1973
5.25.5.30 p.m.
M.F.

H - 1995 - 2

(Mr. McCallum)

at - the paragraph starts : "The rental payable by Canada Square under the lease back shall be augmented in each year by the aggregate of" - and then they go on and give these two examples. So in each case it is an add-on to the six dollars.

I am sorry, I misled you.

Mr. Chairman: Well I was going to ask you where the different spaces were but I don't need to ask you that now.

Mr. Henderson: I was out for the minute, Mr. Chairman, does this form part of the building at the turnover ⁱⁿ 30 years or does Canada Square continue to -

Mr. McCallum: No, this all becomes Hydro's at the end of 30 years.

Mr. Shibley: Is this area included in the computation of the appraised value of the building?

Mr. McCallum: Yes.

Mr. Shibley: So that Hydro is paying the capital cost, so to speak?

Mr. McCallum: Yes

Mr. Shibley: It is not paying rent on that area, or is it?

Mr. Henderson: Yes, we are.

Mr. W. Hodgson: No, we are not.

Mr. Allan: Oh yes we are.

Henderson

Mr. Henderson: Sure, we are getting six bucks right back.

Mr. McCallum: We are ^{getting} ~~paying~~ six bucks but we pay \$4.84.

Mr. Shibley: We pay \$4.84 on the area; you get what back?

Mr. McCallum: Six dollars plus your overages that we have been talking about.

Mr. Shibley: Oh, this is an overage then?

Mr. McCallum: Yes, these are participations whereby -----

Mr. Allan: But we don't get 50 per cent of the overage on this area?

Mr. Genest: That is right.

H - 1995 - 3

Mr. McCallum: No, we sure don't.

Mr. Chairman: Mr. Henderson, are you through with your comments?

Mr. Allan: The lesser of two items, you know that isn't a good word, lesser.

Mr. Shibley: Not from Hydro's point of view. It was a negotiated item I gather.

Mr. McCallum: Yes, that's the one everything else was drawn up and that one was still hanging out at the tail end.

Mr. Chairman: Mr. Hodgson has a question.

Mr. R. G. Hodgson: I just wanted to wait until you are through with this calculation. Mine is a related question, but it hasn't anything to do with that.

Mr. McCallum do you know what the Hydro banking policy is? For instance, I will give you an illustration of what I am talking about. Liquor stores deal with the closest bank to the liquor store; what is Hydro's banking policy?

Mr. McCallum: You mean where do they do their banking, do ~~what~~ company?

Mr. R. G. Hodgson: Yes.

Mr. McCallum: I really don't know, but I think the Bank of Montreal.

Mr. R. G. Hodgson: Because that banking space would become very prime space if they had a policy such as the Liquor Control Board.


Mr. McCallum: Well I don't even know about the policy, Mr. Hodgson. The Bank of Montreal have had a building standing on this site as you know, that little building, for some time. There is no doubt the Bank of Montreal are going to want to get back in on this one. There is also no doubt that there is going to be some hectic negotiations to see how much they can get. The Bank of Montreal are not using anywhere near 24,000 ^{square} feet, and it wouldn't take much of a guesser to understand that they don't ~~need~~ need much more to make the money that they are making, they

August 30, 1973
5.25-5.30 p.m.
M.F.

H - 199⁵ - 4

(Mr. McCallum)

have got everybody ~~in~~ they need to get right now and
there will be some ~~hassles~~ I suppose over what ~~will~~ happen
~~with the rest of that space, just as a practical matter, but~~
~~the Bank of Montreal obviously -----~~



Tape H -1996 follows

H-1996-1

(Mr. McCallum)

hassle I suppose over what will happen with the rest of that space, just as a ~~practical~~ ^{practical} matter. The Bank of Montreal obviously will want to get back there.

Mr. Chairman: This really is the bank's space we are referring to?

Mr. McCallum: Sure, but you know, a bank like to get ~~back~~ back and they like to get back exclusively. Who needs an opponent right in the same building with you. And the facts of life being what they are.

Mr. Allan: Hydro won't have to decide that.

Mr. McCallum: Exactly. Mr. Moog has used that great ability of his to maximize his returns ^{SOME} way or another. But I bet you that is the problem he faces.

Mr. Shibley: I think what might ~~have~~ have been in Mr. Hodgson's mind is that bank space usually is rented at very premium rental rates. Isn't that so.

Mr. McCallum: Well they do, unless you turn around and ^{WHAT} say to them "I'll tell you ~~what~~ I want you to take twice as much as you need". Then banks ^{TEND TO} ~~can~~ think a little more realistically. If you just give them the space that they want they will be very grand with you.

Mr. Shibley: Okay. Can we carry on then with the content.

Mr. McCallum: In clause 32 we get down to the building lease.

Oh here are those figures I was giving to you. Let me just quickly read because I promised the chairman I'd try and finish this off today. Well we have got to go some.

Mr. Chairman: Well you don't mind your evidence being split Mr. McCallum. I don't think we necessarily have to..

Mr. McCallum: No, but I ~~think~~ sort of think it would be a good idea if we could finish this agreement before you split.

Mr. Allan, if I could point out to you and the other members of the committee.

Mr. Chairman: You are not working very closely with your co-partner today, Mr. McCallum.

2
H-1996-7

Mr. McCallum: He doesn't like what I'm saying?

Mr. Genest: Me?

Mr. McCallum: Have I goofed again. He really stands on my toe when I make a mistake you know. He really does.

Mr. Gaunt: That must hurt.

Mr. McCallum: Good for you Murray.

Mr. Chairman: He may be after your toe again I think he has a date with a lady friend. However, carry on.

Mr. Genest: That was no lady friend, that was my wife.

Mr. Shibley: Carry on Mr. McCallum.

Mr. McCallum: Well I was just going to bring to your attention that if you were looking for the correct figures of what I have just now been talking about, about the commercial space you will see them set out, or reasonably correct in the first of paragraph 32. But then if I could go on over to page 25, because I think that is where it starts. If you are going to talk about the building lease. And it says;

"The annual rental payable by Ontario Hydro under the Building Lease shall be calculated at the rate of \$4.84 per square foot (subject to escalation for increases in maintenance costs as set out in Article 9 of the Building Lease) on the aggregate rentable area of the Building calculated in accordance with section 28 (excluding the rentable area of the space on the ground floor, mezzanine and upper concourse not included in the Building Lease to be determined from the actual Building upon completion and certified by the Commission Architect," and so on...

"or, if they are unable to agree by any two of them; plus \$25,000 for the recessed areas not included in the aggregate rentable area of the Building."

Now if I can just stop there. What is being said there is that the rent under the building lease will be \$4.84 a foot plus \$25,000 - just a flat and negotiated sum of \$25,000. The \$25,000 got negotiated because, if you can see in that model out in the front of the building, and down where the shops are going to be there are recessed areas, ^{that} ~~these~~ are recessed well in underneath, and the argument was you should pay according to some formula, you

H-1996-3

(Mr. McCallum)

should pay for that space. The other side said "We shouldn't pay for that space. We are not going to use it". The other side countered by saying "Yes, but it is going to add ~~it~~ immensely to the rents of those shops because it is a very great amenity to be used in conjunction with those shops". And so the argument went. Instead of paying them \$4.84 a foot or something; the argument was that for the total of them they would pay \$25,000. And eventually that was brought to the Commission and they agreed for what is essentially outside space as you can see.

Mr. Shibley: While you are on that paragraph, would you explain the \$4.84 being a set off net figure?

Mr. McCallum: Yes, I think I can do that for you. ~~The basic deal if you will remember was \$4.00 a foot~~

H-1997-1 follows

August 30, 1973
5.35 - 4.50 p.m.
M.R.

(Mr. McCallum)

The basic deal, if you remember, was \$4.92 a foot. Hydro were going to pay all the taxes, ~~and~~ it was decided, however, that the entrepreneur ought to pay for the taxes on the commercial space that was really his pidgeon. Hydro got a figure from their real estate department of what taxes could be expected to be on that commercial space and they were told \$1.08 a foot. And since the deal that we were then trying to strike was one which said, "You've got the commercial space and you've got to pay the taxes on it too, Canada Square, and you should pay it right from the word go," we simply multiplied the total commercial space ~~—~~ I think Bill Coles will tell me if my arithmetic is right ~~—~~ I think we multiplied 83,500 times \$1.08 and that gave a sum of money, which sum of money, when you ...

Mr. Shibley: He's disagreeing with you.

Mr. McCallum: What was ~~the sum of~~ ^{it then} that we gave?

Mr. Coles: Well, it's an average, Jim. If you take the total amount of ^{rentable} ~~rental~~ area in the building and multiply that by \$4.92 and multiply the concourse areas by \$6.00 and ~~you~~ then you take the rental area again ~~and~~ of the building and divide it into that figure, you come up with an average of \$4.84.

Mr. McCallum: I don't understand any more now than I guess the other time that we did it. But what it means is this: That the \$4.84 is a reduction from \$4.92 to reflect the fact that they are paying the taxes on the ~~xx~~ commercial space from day one.

Mr. Shibley: Hydro is paying the taxes?

Mr. Allan: Mr. Coles doesn't agree with that.

Mr. McCallum: No, you are paying ~~per~~

Mr. Allan: His was quite a different explanation.

August 30, 1973
5:35 - 5:40 p.m.
M.R.

Mr. McCallum: ... at a \$1.08 from ~~the~~ day one.

Mr. Coles: We are paying \$6.00 ...

Mr. McCallum: That's right. Instead of \$4.92.

Mr. Allan: ^{Now} ~~He~~ ^{is} talking about rental and you are talking about taxes.

Mr. Henderson: You are ~~setting~~ ^{setting} the taxes ~~that~~ ^{that} have been reduced ~~that much~~ ^{that much} to allow for what the taxes will be on that portion.

Mr. McCallum: Yes, we said to them, "We think the taxes, according to our real estate people, are going to be \$1.08 a foot on the commercial space. We want you to pay that \$1.08 a foot on the commercial space, and if you make the necessary arithmetic calculations, which I didn't make at the time, you will find out that it will ^e affect a reduction on the space that is left from \$4.92 to \$4.84 a foot."

Now, if I haven't got the arithmetic, I think it is very close to what I said ~~--->~~

Mr. Henderson: You are setting the taxes too, are you not, Jim?

Mr. McCallum: We are taking a guess that they are \$1.08. If the taxes are less, it's good for us. If the taxes are more, it's bad for us.

Mr. Allan: Does this continue for 30 years with no adjustment?

Mr. McCallum: Yes.

~~Mr. McCallum~~ Well, now, wait a minute. On the tax escalations, all the tax escalations that come in after that, they promise to get those from the tenants and to pass them on to us. But to tell you how we got \$4.84 first before you start considering escalations the answer is yes, we are protected on escalations too of taxes.

But the \$4.84 is the result of a calculation.

Mr. Allan: Mr. Coles wants to make a speech.

~~Mr. McCallum~~ ^{Mr. Chairman} By all means let him get in to the act.

August 30, 1973
5:35 - 5:40 p.m.
M.R.

Mr. Coles: It is really just one simple calculation. ~~It~~ Instead of Hydro paying \$4.92 on the whole building and us paying them \$6.00 back on the commercial space, we netted the two figures, and that's how we come ~~w~~ up with an average of \$4.84.

Mr. Allan: It has nothing to do with the taxes at all?

Mr. Shibley: No.

Mr. Coles: No, how the \$6.00 figure was arrived at is connected with taxes, but as far as the \$4.84 is concerned, the taxes have no relationship in that, no.

Mr. ~~McCallum~~ Gaunt: So the \$4.84 is really an average?

Mr. ~~McCallum~~ Yes, but the \$4.92 didn't wash, ~~on the two sides, taxxxaliyx~~
That is the reason I was using \$1.08.

Mr. Henderson: Let's get it straight: Is this taxes - this eight cents' difference?

Mr. Coles: \$1.08.

Mr. McCallum: Hydro says it was, That the difference between the ~~us~~ Hydro said that the \$1.08 was their estimate of the cost of the taxes in respect to that area. What he said it was I'm blessed if I know.

Mr. Henderson: Well, he said a little different, ~~didn't~~ than you did.

Mr. Shibley: And I think the ~~document~~ document will bear out Mr. Coles. I have seen some documentation to the same effect.

Mr. Coles: ~~This~~ Instead of, ~~as I say, we~~ ^{us paying} Hydro paying us \$4.92 on everyting and then ~~us pay~~ Hydro \$6.00 back on the commercial space, we just ~~net~~ netted the two figures and it averaged out to \$4.84.

Mr. Shibley: That is right. That's ~~what~~ in the documents.

1998 ~~map~~

Aug. 30/73
5.40 to 5.45 pm
DT

(Mr. Genest)

~~but it is an average figure on the building, on the whole rentable area of the building.~~

~~Mr. McCallum: I am not quarreling with that, but is not the difference the difference between~~

Mr. Chairman: Gentlemen, may I just interrupt for a minute. We are giving Hansard here quite a difficult time and if this is to be on record and of any help to the committee if we are going to --

Mr. Genest: May I suggest, Mr. Chairman, I don't think you are going to finish at this rate. You are not going to finish --

Mr. Chairman: You are worrying about that lady friend?

Mr. Genest: No, she is used to waiting. I think we should get -- rather than clutter up the record with speculations, why don't we refresh Mr. McCallum's memory --

~~Mr. McCallum: He is used to waiting.~~

Mr. Genest: -- ~~Max~~ And bring in Mr. Coles and come up with an agreed answer on that.

Mr. Chairman: I think it is a good place to take a break and we have got to go back to Mr. McCallum ^{anyway} ~~now~~ and I don't think we are going to finish this tonight. I think you have some further questioning of Mr. McCallum, have you not?

Mr. Shibley: Oh, yes.

Mr. Chairman: So that we are not going to finish with you tonight anyway. So, if we will break now --

Mr. McCallum: But you are going ahead with Mr. Moog on Tuesday?

Mr. ~~Chairman~~ Chairman: And the thought is to go ahead with Mr. Moog, as I understand it, Mr. Shibley on --

Mr. Shibley: On Tuesday.

Mr. Chairman: When we reconvene --

Mr. McCallum: Mr. Moog and his other witnesses as it were.

Mr. Shibley: What I think I will do is complete Mr.

Aug. 30/73
5.40 to 5.45 pm
DT

(Mr. x Shibley)

Moog and then complete your evidence, because it is too hard to leave it ~~a~~ too long to complete. I think it would be better ~~know~~ if Mr. Finlayson has no objection, to complete Mr. Moog, then to complete your testimony. That fits in pretty well anyway.

Mr. Finlayson: And after Mr. McCallum, to go back to the other Canada Square witnesses?

Mr. Shibley: I am intending, over the weekend, to try to schedule the line up of witnesses on almost a day-to-day basis and my present instinct is to go that route, yes.

~~Finlayson~~
Mr. Finlayson: We appreciate that -- we are not going to hold you to that, -

Mr. Shibley: There may be variations in that -

Mr. Finlayson: But that is your present intention?

Mr. Shibley: Right.

Mr. Finlayson: Thank you.

Mr. Chairman: Perhaps the three lawyers, Mr.

Finlayson, Mr. McCallum and ~~you~~ yourself can let one another know over the weekend how you intend to proceed.

Mr. Shibley: What I am hoping to do is by tomorrow to have some kind of a line-up. I am a little worried about getting people available. I am hoping to fire in more than one witness per day on given days.

Mr. Chairman: Well, thank you all for your help and co-operation and hope you all have a good weekend. We are adjourned until 10 a.m. on Tuesday morning next.

The committee adjourned at 5.43 o'clock, p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC
James McCallum, QC

Counsel, Ontario Hydro:

Commission architect, Ontario Hydro:

K.H. Candy

Secretary-treasurer, Canada Square Corp. Ltd.:

W.C. Coles

1108

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, September 4, 1973

Morning session

1999-2032

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

Sept. 4, 1973
10:11-10:15 a.m.
PLG

1999-11

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. Mr. Renwick has a statement, or a brief question he wants to put. Mr. Moog, I believe has a statement to make, and then I understand that Mr. Shibley wants to produce the ^{AMES} ~~AMES~~ file through a representative ~~of~~ of the A. E. Ames Company, and then immediately back to Mr. Moog again.

Mr. Renwick: Mr. Chairman, my remarks can't be dignified as a statement. I just wanted to request, Mr. Chairman, that Mr. Smith and Mrs. Shuttleworth be recalled briefly to answer two or three or four questions that I am anxious to put to them. The reason I make the request is that, as you know, I have, and I am sure other members have as well as myself, taken the threat reported in the Globe and Mail on April 30, and referred to in Exhibit 172, to have been the precipitating cause of this inquiry, and a perusal of the evidence as to the origin of the threat, the motivation behind it, and whether or not the words which patently, on their face, bear a threatening connotation were in fact a threat, are questions of primary responsibility for the committee to arrive at a clear-cut decision, and I therefore, having perused Mr. Smith and Mrs. Shuttleworth's evidence, want to ask specific direct questions of them to ascertain whether or not they are prepared or able to state who it was who made the specific statement which is reported by Mr. McAuliffe in the Globe and Mail on April 30 and I would hope that the committee would accede to that request. I don't think it would take very long. Certainly it won't so far as I am concerned and I would make the request now so that it can be carried out with the least inconvenience to Mr. Smith and to Mrs. Shuttleworth.

Mr. Chairman: Thank you Mr. Renwick. I know you are concerned on that point. Regrettably Mr. Smith and Mrs. Shuttleworth have each been back twice, but as you say, it is an important point and if it would help you clear the matter up, help all of us clear the matter up, I don't think it will take long, and

(Mr. Chairman)

I think it is a reasonable thing to do.

Mr. Henderson: Mr. Chairman, I am in agreement. I am getting into a tight schedule with my other committee and I was wondering if any way next Monday or Tuesday, Jim, that you might be able to get them to come in.

Mr. Chairman: Well I think we will have to leave it a little bit to Mr. Shibley to try and work at their convenience a little bit this time, as well as our own, but...

Mr. Renwick: Perhaps MR. Henderson could let Mr. Shibley know what dates he will be...

Mr. Henderson: Well next Monday and Tuesday...I am going to leave you this afternoon for the other committee for a while and again tomorrow morning.

Mr. Shibley: Will you be available next Monday?

Mr. Henderson: I will be at this committee next Monday and Tuesday.

Mr. Shibley: I will arrange that for Monday next.

Mr. Henderson: But I won't be there the rest of next week. I have other commitments.

Mr. Shibley: I will make particular arrangements to do that. I am hoping that by the time we complete Mr. McCallum's evidence that the remaining witnesses are relatively short and I think we can arrange things so that that can be done.

Mr. Henderson: Thank you. I appreciate that.

Mr. Chairman: Mr. Moog, I understand you ~~has~~ have had a weekend in New York and have to report on the activities going on in that big city.

Mr. Moog: That is right Mr. Chairman.

Mr. Deans: You are smiling.

Mr. Moog: Yes I am smiling.

Mr. Renwick:the Labour Day parade.

Mr. Moog: I have a short statement here in regards to our meeting and also what the financing touches on in general. I would like to read it:

September 3, 1973
10.15 - 10.20 a.m.
M.R.

(Mr. Moog)

~~_____~~

~~_____~~

As a result of our meeting Friday I am able to report that Canada Square Corporation and the Prudential Insurance Company of America have reached complete agreement on all points regarding the bond purchase agreement. There is great mutual respect between our two companies and there is no question that Prudential appreciated our efforts to keep its name and the dealings between our two companies as confidential as possible.

As already brought out in the evidence, low-cost permanent financing is the most important aspect of the Canada Square-Hydro transaction and from Canada Square's point of view, the continuing availability was the only matter of real concern to it.

This issue has now been resolved by Canada Square better than anticipated by any of its competitors or others. Hydro bought Canada Square's ability in all phases of the development industry, including its ability to finance in a more ingenious way than others, permitting it to put its dollars into the building rather than into higher interest charges.

So that there will be absolutely no misunderstanding, I would like once more to make it clear to this Committee that Canada Square is able and will fulfil its commitments to Hydro and that Hydro is receiving its outstanding benefits under its contract with Canada Square in spite of this inquiry and not, as it has been attempted to construct, because of this inquiry.

From the very outset Canada Square agreed with Hydro, by virtue of paragraphs 5, 6 and 7 of the agreement, to build a building to the complete satisfaction of Hydro and to have the building, where necessary, redesigned by Hydro's architects.

September 3, 1973
10.15 - 10.20 a.m.
M.R.

(Mr. Moog)

Even before the contract was signed the building was being substantially redesigned by Gordon Adamson & Associates and Canada Square. It has built a much more expensive and elaborate podium and has also made the changes recommended by the Adamson firm in the tower, all at its own expense and long before any thought of any inquiry.

Particular issue was taken with the fact that a much more expensive ceiling is being installed, the innuendo being that this has happened because of the inquiry. Let me clear up this point ~~for~~ once and for all. In one of the very first meetings with Mr. Candy I personally stated, and was backed up by my architect, that the ceiling systems presently being used in office buildings are due for a complete revision. I had told Mr. Candy in one of our very first interviews that we were working to give him a much superior ceiling, at our expense, than that shown even in our own building, the Transamerica Building. I called it a three-dimensional ceiling and told him that I hoped that it would be fully integrated to include lighting, acoustics, air-conditioning, and supply of power and telephone. I promised Mr. Candy that we would make a special effort to give him something better than a flat ceiling by the time the ceiling contract would be let. We have done exactly that.

Finally I want once more to quickly go over the curtain wall ~~is~~ contract. We could have saved substantial amounts of money by giving Hydro a curtain wall made out of reflective glass which would have the coating on the outside. However, it was our worry that 15 or 20 years hence, or maybe at the time Hydro takes over the building in 30 years, there would have been some abrasions and scratches even through the mere process of window washing. Without even going into much detail with Hydro on that aspect, we selected the particular curtain wall presently contracted for which has the reflective coating on the inside of the outside panel.

September 3, 1973
10.15 - 10.20 a.m.
M.R.

(Mr. Moog)

I am making the above points once more in my language to make it absolutely clear to this Committee that it wasn't this hearing that caused us to do the above or that influenced our thinking to give Hydro the building as presently conceived and constructed.

Mr. Chairman: Thank you, Mr. Moog.

Mr. Moog: I have copies of this statement, if that is any help.

Mr. Chairman: I think we'd be glad to have them.

Mr. Shibley: Mr. ~~Moog~~ Moog, if you'll just give way for the next few minutes to Mr. Johnson of Ames, I'd like to prove ~~that~~ certain of the documents in their file through him and then we'll resume in a few minutes.


Mr. Moog: Thank you.

Mr. Chairman: I might say we are very happy, Mr. Moog, to hear that you've come to a definite and satisfactory conclusion with your negotiations.

Mr. Moog: So are we Mr. Chairman.

WILLIAM ALBERT JOHNSON, sworn.

H-2001 to follow



Sept. 4/73
10:20 - 10:25
M.S.

Mr. Shibley: Mr. Johnson, with what firm are you associated?

Mr. Johnson: A.E. Ames and Company Limited.

Mr. Shibley: And for what period of time have you been with that company?

Mr. Johnson: Since 1966.

Mr. Shibley: Have you been the person primarily responsible for dealings with ~~Canada~~ Canada Square, referable to the permanent financing for the head office building of Hydro?

Mr. Johnson: Yes.

Mr. Shibley: I understand that only Mr. Bellamy of your firm supplemented your own efforts. Is that correct?

Mr. Johnson: That would be correct.

Mr. Shibley: I am producing to you ~~and~~ I know you have your full file in front of you ~~but~~ I have made a selection of documents from your file which is in the blue folder to your right. And all I intend, without asking you questions about content ~~and~~ I would ask the committee members to desist their temptation to ask questions of the witness, because all I'm doing now is having these documents identified. I will be examining Mr. Moog vis-à-vis them. I would also ask the press not to publish content. I'm expecting to complete examination of Mr. Moog this morning, certainly as far as this file is concerned, but ~~if~~ if for any reason I don't get through it in time, I would ask the press not to deal with matters in the file that aren't ~~already~~ already covered with Mr. Moog.

Now, the first document indicates a date of October 27, 1971. I take it this is the gist of a conversation with Mr. Moog in that year, of a preliminary nature. Is that correct?

Sept. 4/73
10:20 - 10:25 am.
M.S.

Mr. Johnson: That's correct.

Mr. Shibley: And then the next series of documents are handwritten notes of your own, making computations in that respect. Is that correct? The next four pages. ~~Mr. Johnson~~ Those would be notes made in 1971?

Mr. Chairman: Mr. Shibley, may we mark the whole file as one exhibit?

Mr. Shibley: Yes.

Mr. Chairman: Number 223, I believe, is the next number.

Mr. Renwick: What is 222?

Mr. Shibley: The photographs.

Mr. Chairman: Oh, the photographs.

Mr. Renwick: Thank you.

Mr. Johnson: I can't be sure if those were done in 1971 or in early 1972. I'm sorry.

Mr. Shibley: I see. *All right, I'll leave it there!* You say ~~or~~ early 1972?

Mr. Johnson: Well, or in 1972~~8~~


Mr. Shibley: Or in 1972. All right. Well, we'll leave that as an open question as to date. You might consider that before you return, Mr. Johnson. Just before we go into 1972 clearly on the next document, ~~as~~ ^{as} of 1971 discussions, had there been any discussion referable to the Prudential?

Mr. Johnson: No.

Mr. Shibley: No. Then the next document is dated July 25, 1972, and I understand ~~this~~ this is the result of a discussion with Mr. Moog? Is that correct?

~~Mr. Johnson~~

Tape H 2002 follows



Sept. 4, 1973
10.25-10.30 a.m.
M.F.

H - 2002 - 1

~~(Mr. Shibley)~~

~~and I understand this is the result of a discussion with~~

~~Mr. Mogg, is that correct?~~

Mr. Johnson: Yes, that is correct.

Mr. Shibley: On the date indicated?

Mr. Jphnson: Yes.

Mr. Shibley: And there was an interruption then from the '71 communication with you until mid-July. Is that right?

Mr. Johnson: That would be approximately right.

Mr. Shibley: This is sort of a resumption of contact with you. Is that right?

Mr. Johnson: Yes - well, I can't be sure of that, Mr. Shibley.

Mr. Shibley: All right. Then the next documents are hand-written notes. Are they your notes?

Mr. Johnson: Are you talking page by page now?

Mr. Shibley: Yes. You have got five pages of hand-written notes starting "borrow the equivalent of \$40 million".

Mr. WJohnson: Oh, excuse me; well, then, that July 25, you are assuming there are three or four pages that follow it?

Mr. Shibley: Yes, that is right. Then the next document I have you ~~Mr. Johnson~~ had indicated to me that this ~~was~~ probably ^(some time) compiled in the period July 25th to July 28th?

Mr. Johnson: That would be correct.

Mr. Shibley: Yes. And that is the next five pages were compiled during that period of time, is that right?

Mr. Johnson: Correct.

Mr. Shibley: And then you have the July 28th document - the date is a little scrambled, but that is July 28th?

Mr. Johnson: Yes, it is.

Mr. Shibley: And in this connection this recites communications you had with Metropolitan Life?

Mr. Johnson: That is correct.

Sept. 4, 1973
10.25-10.30 a.m.
M.F.

H - 2002 - 2

Mr. Shibley: And then the next document is dated August 3rd and this recites communications you had with Sun Life?

Mr. Johnson: That is correct.

Mr. Shibley: And the next document, August 4th, is a notes of a conversation with Mr. Bradshaw?

Mr. Johnson: That is correct - the top of the document is, I am sorry.

Mr. Shibley: I beg your pardon?

Mr. Johnson: The top of the document is.

Mr. Shibley: Thank you, yes. And that conversation was held on August 4th?

Mr. Johnson: Yes.

Mr. Shibley: The bottom of the document is referable to a further conversation with Bradshaw on August 29th?

Mr. Johnson: Correct.

Mr. Shibley: Then the next document - you have told me - was probably compiled during the week ending September 22nd, just to assist you. That is the one page.

Mr. Johnson: Right.

Mr. Shibley: And that's notes of a conversation you had with Mr. Moog?

Mr. Johnson: Yes.

Mr. Shibley: Then the next documents are notes of yours to the file. At this point in time I think you were noting it for the information of others within the firm? And ~~that~~^{does} that outline your understanding of what was intended for the financing at that time? September 22?

Mr. Johnson: Yes.

Mr. Shibley: Then the next document, September 29, '72, call from Lynn, that is Lynn Goth, the president of Ames in New York, is that correct?

Mr. Johnson: That is correct.

Sept. 4, 1973
10.25-10.30 a.m.
M.F.

H - 2002 - 3

Mr. Shibley: And these again are your notes?

Mr. Johnson: Yes.

Mr. Shibley: And on the bottom of that page you have got "call Moog 4.10, September 28", and my memory of our discussion is that you believe you had your conversation with ~~EE~~ Lynn Goth on the 28th, called Moog the same day, and made the notes of the conversation with Lynn the following day?

Mr. Johnson: Well, I would have made the notes at the same time. I probably dated the document the following day.

Mr. Shibley: Right, but in any event it indicates a - and did you communicate this information to Mr. Moog on that date as indicated?

Mr. Johnson: ~~x That's right.~~ *Yes, I would think so.*

Mr. Shibley: Then the next document is October 3, '72. Again these are just computations that you were making at that time based on information provided by Mr. Moog? Is that correct?

Mr. Johnson: That's correct.

Mr. Shibley: And the next document indicates the scheduling of air trips to New York to visit with the Prudential, I believe?

Mr. Johnson: That's correct.

Mr. Shibley: The next document, ~~is~~ October 3, '72, is the draft of a Commission agreement for your services - the next two pages, is that correct?

Mr. Johnson: Yes, that's correct.

Mr. Shibley: And then the next document is a redraft of the same Commission agreement dated October 5th, is that correct?

Mr. Johnson: That is correct.

Mr. Shibley: The next document on the long form is with Fred Ferber, etc. You indicated to me that this constitutes notes taken at your meeting in New York with the Prudential on October 4th?

Mr. Johnson: That would be correct.

Sep. 4/73
10.30 to 10.35 am
fvk

~~(P. ...)~~

document, is, I think, from the same meeting, was it not, this quality of least, etc?

Mr. Johnson: It may have been, for conversation held.

Mr. Shibley: Yes, and the indication of names on the bottom therefore, are names of people within Blakes who might have been ~~retained~~ retained for the transaction by the Prudential, ~~is that~~ is that correct?

Mr. Johnson: That's correct.

Mr. Shibley: And all of this document again is for October 4, 1972?

Mr. Johnson: I would think so.

Mr. Shibley: Then the next document is October 30, 1972, and these are your notes again, resulting from conversations with whom?

Mr. Johnson: I suspect the first top of the page was done probably for my own use, again calculations ^{to} just recite what ~~was~~ there, ~~was~~ although the bottom item where the rate was changed, I suspect, was a conversation with Mr. Moog or in Mr. Moog's office. The bottom of it, I believe, was conversation ~~where~~ ^{about} an attempt ~~was~~ to find out some information that the lender was asking.

Mr. Shibley: Right. And then the next page where it says, "Steadman says", that's just a continuation of the same document?

Mr. Johnson: That's correct.

Mr. Shibley: Then there's a document October 31 setting out certain sections of the Power Commission Act and the Public Works Act, this was in pursuit of information referable to questions by the lender, is that correct?

Mr. Johnson: Yes, they're ^{my} own notes.

Mr. Shibley: Then, another document, October 31, 1972, starting: "Moog-Ben Holloway"; he's of Equitable is he not?

Mr. Johnson: I understand so. I don't know the gentleman.

Mr. Shibley: Did that note result from discussion with Mr. Moog?

Mr. Johnson: I would assume so, yes.

Mr. Shibley: And refers to, I take it, a possible alternative of Equitable forming up a consortium?

Mr. Johnson: That ^{is} correct.

Mr. Shibley: Right. Then, on the next page, Fred Ferber, he is with Prudential isn't he?

Mr. ~~Shibley~~ Johnson: That is correct.

Mr. Shibley: And who's ^{"talk to"} ~~Ray~~ Charles? Is he also with Prudential?

Mr. Johnson: Yes.

Mr. Shibley: ~~Shibley~~ Charles whom? Oh, that's Ray Charles.

Mr. ~~Shibley~~ Johnson: Ray Charles.

Mr. Shibley: And this document, you told me, is sometime in the early part of November, 1972?

Mr. Johnson: Yes, I would think so.

Mr. Shibley: Then the next document, November 3, again Fred Ferber, are these notes of conversations you had with him?

Mr. Johnson: Yes.

Mr. Shibley: Is the whole of the document referable to conversations with him or is it someone else?

Mr. Johnson: No, I would think it would all be with him.

Mr. Shibley: Then, the next document is the letter of November 8 which is the first of the two letters forming the commitment of the Prudential to Canada ~~Square~~ Square, is that correct?

Mr. Johnson: Yes, that's a reporting letter to Canada Square.

Mr. Shibley: Yes, I noticed in that it says that the Prudential agreed to provide financing for this project subject to approval of their investment committee. We can move on to the next document dated November 8, Fred Ferber ~~and~~ again, are you still with me?

28 Sep. 4/73
10.30 to 10.35 am
fvk

Mr. Johnson: No, November 8?

Mr. Shibley: November 8, yes. Right after the
commitment letter there is another handwritten document.

Mr. Johnson: Yes.

Mr. Shibley: November 8, Fred Ferber.

Mr. Johnson: Yes.

Mr. Shibley: He's with the Prudential. You see:

"Can't sue without consent". Was that the content of conversation
you had with him at that time?

Mr. Johnson: Yes.

Mr. Shibley: The next document is November 10, 1972.

I take it this was the formula for the calculation of your commission
in the amount of \$180,000 ~~is~~ is that correct? There's two pages.

~~Mr. Johnson: Again they're internal or working documents.~~

~~Mr. Shibley: Yes, but that's what the \$180,000 is,~~

~~it's your commission?~~

(Tape H-2004 follows)

(Mr. Shibley)

~~there is two pages~~

Mr. Johnson: They again were internal working documents that we were ~~using~~ using.

Mr. Shibley: Yes, but that is what the 180 is. It is your commission that you were going to contend for.

Mr. Johnson: Yes.

Mr. Shibley: And then a letter of November 16, 1972, to which is appended an article of the Globe and Mail, dated November 14. Did you remit that to Mr. Ferber? That is your letter.

Mr. Johnson: Yes.

Mr. Shibley: Then, we have seen this next letter. This is the November 17, 1972, letter setting out the provision for payment to your firm by Canada Square and we don't have to deal with it. The next two documents are telex, I gather. Is that correct?

Mr. Johnson: That is correct.

Mr. Shibley: These are from the Prudential. I am sorry, from you to the Prudential and from the Prudential...

Mr. Johnson: The first telex, which is the one addressed to me, is sent by Paul Fisher to me in Montreal, and the second one is my reply to him.

Mr. Shibley: Yes. Just so it will be clear, when it says: "My man on Ontario Hydro has left for New York to price the Ontario issue", just so we are not confused on that, what does that mean?

Mr. Johnson: Well, I had asked him if he could find out who I should contact at Hydro to get the statistical information that Prudential were asking for.

Mr. Shibley: "Price the Ontario issue" is what I am interested in.

Mr. Johnson: Oh well, at the time there was an Ontario public financing in New York, and the person he knew at Hydro was down to negotiate the pricing.

Mr. Shibley: All right. Then, the next document is the ~~the~~ letter of December 21, and this is ~~the~~ the second half, if you like, of the commitment, advising that on December 12 the Finance Committee approved the purchase of 45 million, 8 percent, 30 year notes of Canada Square. Is that correct?

Mr. Johnson: That is correct.

Mr. Shibley: Well then, the next is a draft of a letter from your firm to the Prudential, reporting on certain information requested, referable to Canada Square. Is that correct?

Mr. Johnson: That is right.

Mr. Shibley: And the next letter of January 30 is the final form of that same reporting letter, setting out information?

Mr. Johnson: That is correct.

Mr. Shibley: And finally there is a document of May 14, containing notes by Mr. Bellamy of information resulting from an exchange with Mr. Moog. Is that correct?

Mr. Johnson: That appears to be Mr. Bellamy's writing, yes.

Mr. Shibley: O.K. And was that from discussions with Gerry Moog and he?

Mr. Johnson: I assume it was. I don't know.

Mr. Shibley: Is that your information?

Mr. Johnson: That is the information I was given, yes.

Mr. Shibley: Thanks Mr. Johnson.

Mr. Renwick: Mr. Chairman, I believe Mr. Shibley ~~referred~~ referred to a letter to Frederick J. Ferber of November 8. I don't appear to have that letter in my file.

Mr. Shibley: No, not a letter, I think it is --- oh wait a minute...

Mr. Renwick: I ~~have~~ have the commitment letter of November. The Ames letter to Canada Square, but I thought you referred to a letter.....

Mr. Shibley: No. There is a handwritten notation...

Mr. Renwick: Oh it is a hand-written note. Thank you.

Mr. Shibley: ...of November 8.

Mr. Renwick: Thank you.

Mr. Shibley: Thanks Mr. Johnson. I am going to question him later, but I didn't want to interrupt Mr. Moog's questioning.

Mr. Henderson: Mr. Chairman,

Mr. Chairman: Mr. Henderson.

Mr. Henderson: I recognize that there are some different faces at the Solicitor's table and I wonder if they need introduction, or should we know who they are representing?

Mr. Chairman: I think the only new one is perhaps Mr. Garrow, and he is representing A. E. Ames.

Mr. Garrow: Mr. Mik is with me, Mr. Chairman.

Mr. Chairman: Thank you.

Mr. Shibley: Mr. Moog, I am having Exhibit 223 placed in front of ~~you~~ you. I would like to go through it with you quickly. I note the date is October 27, 1971, which appears to be the time of the communication with Ames on the first occasion, and I note also that there is reference in that, and I would ask the committee members to just underline the figure \$50 million. At that point of time, ~~we~~ were you discussing ~~the~~ financing in the amount of \$50 million?

Mr. Moog: It was our opinion in the early ~~st~~ stages that the building discussed would probably run as high as \$50 million.

~~Mr. Shibley: I understand that under the terms~~

Tape 2005 follows

September 4, 1973
10.40 - 10.45 a.m.
M.R.

~~High 31.450 11.33~~
Mr. Shibley: And do I understand that under

the terms of the agreement as contemplated with Hydro the amount was an open question?

Mr. Moog: That's right.

Mr. Shibley: Now then, it references the OISE

lease which contains covenants tantamount to provincial guarantee and ~~was~~ ^{he} mentioned that he has arranged \$20 million of the required financing in Switzerland to be ~~denominated~~ ^{could} in Swiss francs, balance of \$30 million ^{can} be raised in Canada on a 30-year term.

Now, then, then there is reference here of discussions with people within the Ames organization and it was the consensus that it probably could be offered probably to institutions in Canada at about a half to three-quarter per cent above the current Ontario rate.

Did you discuss with Mr. Johnson that because the funding was going to be with Hydro and guaranteed by the province that they should relate the rate to ~~the province~~ what they call the "current Ontario rate". Was that discussed between you?

Mr. Moog: I don't recall that discussion at all, Mr. Shibley. I am afraid that I can't agree with you either that I discussed the province. I think what I said at the time to Mr. Johnson, if I can recall this correctly, is that we will have a very attractive deal which will have very excellent guarantees.

Mr. Shibley: But the question I really want to establish, Mr. Moog, is that when you were talking a rate of eight to eight and a quarter at that time, was it because ~~the~~ it was expected that the guarantee of the province would be obtained and that the rate should relate to the Ontario rate, as they call it?

September 4, 1973
10.40 - 10.45 a.m.
M.R.

Mr. Moog: I didn't anticipate the province's guarantee but I did state I'm quite sure that it would be a very excellent guarantee.

Mr. Shibley: All right.

Mr. Moog: which would command as low a rate as that.

Mr. Shibley: Then he goes on, "He" meaning you will now enter into final negotiations with the province to consummate their offer to lease and will advise within the next couple of weeks what the results of those negotiations are."

Now, did you tell Mr. Johnson that as of October 25, 27, 1971?

Mr. Moog: I did try to avoid the name Hydro. And I think I said something it will be in a category of OISE. I think I related it to OISE, Mr. Shibley. I just wanted to avoid the name Hydro because I didn't want to have ^{that} name appear on the street.

Mr. Shibley: I'm not interested in the word "with the province" so much as I am, as you say, "he will now" - that is, at or about October 27, 1971 ^{he} enter into final negotiations to consummate their offer to lease, and will advise within the next couple of weeks what the results of those negotiations are." Did you tell Mr. Johnson that?

Mr. Moog: That I would enter into final negotiations?

Mr. Shibley: Yes.

Mr. Moog: Being my optimistic self I probably might have said that I hoped to conclude ~~the~~ whatever we were dealing on reasonably soon. Now, whether it was a couple of weeks or a couple of months or whatever, I really can't recall, Mr. Shibley.

Mr. Shibley: Well, Mr. Moog, I want to draw your attention and that of the committee to the circumstances of what was transpiring within Hydro during the month of November, 1971.

September 4, 1973
10.40 - 10.45 a.m.
M.R.

(Mr. Shibley)

And we've had it repeated often enough for all of us to remember that they had a meeting on November 2nd and there were meetings on the 22nd of November and this seems to accord, ~~with~~ in point of time, with what you yourself are saying here, that you expected something to happen within the month of November, 1971.

Mr. Moog: Well, I don't think that I would pin it to any month. I think I just hoped to be able to come to conclusions much sooner that I did in the end.

I really can't help you any further on that,
Mr. Shibley.

Mr. Shibley: Why were you expecting final negotiations with Hydro in November of 1971?

Mr. Moog: Well, I didn't say that, he said that.

~~Mr. Shibley: Did he say anything about the content of the conversation was~~

~~Mr. Moog: Well, I don't recall what the content of the conversation was~~

~~content of the conversation was~~

Sept. 4/73
10:45 - 10:50
M.S.

~~...didn't say that, he said that.~~

Mr. Shibley: But he's saying what you told him.

Mr. Moog: Well, I can't recall what the exact content of the conversation was. All I am trying to say is that I was optimistic, as always, and hoped that I would complete these transactions soon. Now, whether he put in a couple of weeks or not, I'm not responsible for that. I'm sorry.

Mr. Shibley: You also had a meeting with Mr. Johnson and Mr. Bradshaw, with Ames, on November 11, 1971, did you not? It's not in those documents.

Mr. Moog: If the other gentlemen say so, I would certainly agree. I can't recall, but it's quite possible.

Mr. Shibley: Mr. Moog, was it not your expectation that without having dealt with other developers, that Hydro might well make a selection of Canada Square within the month of November 1971? As reflected by this document.

Mr. Moog: I can't recall that that was so.

Mr. Shibley: All right. Now then ---

Mr. Renwick: Mr. Chairman, may I ask a question at this time?

Mr. Chairman: Mr. Renwick?

Mr. Renwick: Mr. Moog, could you tell me at what point in time you learned from Hydro that there was going to be a call from other developers for proposals? And was it connected with this question of these final negotiations? Let me perhaps state that a little more clearly. It was about November of 1971 that there first appeared clear indication in the exhibits which we have

Sept. 4/73
10:45 - 10:50 am.
M.S.

(Mr. Renwick)

from Hydro that there was going to be something called a contest, or a competition, or that other proposals were going to be invited and a decision made. Do you recall being specifically advised of a time when Hydro made this decision?

Mr. Moog: No. I think I said previously I seriously did never know what happened within Hydro. All I did is push ~~me~~ to come to completion on what my proposal was to Hydro. What they did within themselves, I was not aware of. And I was not aware of when they did what with anybody else.

Mr. Renwick: Well then, when were you aware of the fact that there was going to be a call by Hydro for other proposals?

Mr. Moog: I can't help you. I can't recall when I was aware. I always assumed that they would earn their medals in whichever way they see best fit. I can't help you.

Mr. Renwick: But at the time of your, well, during the summer and fall of 1971 up to this time in October, did you have any -- did you anticipate that it was simply going to be a matter of selecting your company to proceed with this development?

Mr. Moog: I never tried to second guess what Hydro would do. I knew they were wanting a building several years ago. I presumed that all sorts of people would be dealing with them. I had no idea what their particular status was at any particular time. All I impressed on Hydro, and that was of course Mr. Candy, right from the onset was, if you want your building, you've got to make a decision now before all hell breaks loose on the financial market, before inflation runs away. And those were my concerns.

(Mr. Moog)

Those were my points I pressed on him. I said, this is the calm before the storm. I said it very often. I pressed. That was all I was interested in, is to nail down money when there was still money available at half decent rates. Because I knew when that isn't there, there would be no deal. Also, when inflation has run away, it would cost that much more. I can't help you with what happened on the Hydro side.

Mr. Renwick: Apart from what happened at the Hydro side, did you, on October 27, expect that the course of your discussions at Hydro were such that you were going to be selected to do this job?

Mr. Moog: I expected, by being able to come in somewhat close to a favourable rental rate as that of OISE, that I would get the job. I always did expect that. Because I thought if I produced that sort of a building, that it would be very difficult for anybody to duplicate it. I always expected that.

Mr. Renwick: I understand that, but I want to make the distinction between you expecting to win and ^{being} ~~be~~ selected. I want to make the distinction between an expectation that you would be selected individually by Hydro without a competition or without ^{other} proposals, or you being selected by Hydro after ~~any~~ comparison with other proposals.

Tape H 2007 follows

Sept. 4/73
10:50-10:55 am
PLG

(Mr. Renwick)

~~proposals, or proposals initiated by Hydro after comparison
with other proposals.~~

Mr. Moog: I had no idea how Hydro would go about that. I had no idea whatsoever.

Mr. Renwick: Would you say that this second-last paragraph in this memorandum of Mr. Johnson's of October 27 would reflect a reasonable statement of ^{what} ~~what~~ you would expect Mr. Johnson to conclude from your discussions with him?

Mr. Moog: All I can say is that I was definitely optimistic in anything I stated to him, and then he drew his conclusions from that. I can't recall any more what was said exactly, Mr. Renwick. I am sorry, I really would be pressed.

Mr. Renwick: You can't enlighten the committee about final negotiations.

Mr. Moog: No. No, I am sorry, I cannot.

Mr. Shibley: Then Mr. Moog, if you will just, with the committee, turn over the next couple of pages and reach the third of the pages with handwritten notes, 6 1/2, 7 1/2, 8 and 6, I am only interested in the sentence in the middle of that page.

Mr. Moog: I am sorry, which page is it?

Mr. Chairman: Just one page in between then our file I think.

Mr. Moog: I have got a handwritten one, a handwritten two, figures ranging from one to 15 totalling up to something like 70,000.

Mr. Shibley: No. You are further ahead than I want you to be.

Mr. Moog: Further down the line.

Mr. Shibley: After the letter -- just move -- after the letter we have dealt with, just by-pass the next two pages and then you come to a page where in the middle of it it says, "Offer probably very early January". Do you see that?

Mr. Moog: It is reversed in my file. I am sorry.

Mr. Chairman: In our file it was only one page.

Mr. Bell: I think your file is wrong. His is right.

Mr. Shibley: "Offer probably very early in January".

Now, again, this seems to suggest, Mr. Moog, and I ~~am~~ would like your comments on it, that Ames were expecting to do the financing in early January of 1972, which accords with the letter we have just been dealing with; namely, that you were ~~am~~ expecting final negotiations ~~with~~ to consummate some time in November of 1971.

Mr. Moog: That is quite likely.

Mr. Shibley: Now then, I pass to the document dated July 25, 1972. It is a series of four pages of ~~am~~ notes. Are you there with me now?

Mr. Moog: Yes.

Mr. Shibley: Now, do I take it there was ~~an~~ an interruption, Mr. Moog, of your communications with Ames from late 1971 and maybe even early 1972 until July of that same year? Is that correct?

Mr. Moog: I suppose we haven't had many conversations ~~am~~ back and forth. That is true, yes.

Mr. Shibley: You waited until a time following approval by Hydro of the entering into a ~~am~~ contract with your firm, ~~am~~ which approval issued on July 19. Is that correct?

Mr. Moog: We weren't doing very much with Ames at that time. That is all I can say from this. ~~am~~

Mr. Shibley: That is what I mean. There was an interruption and now you were starting again with Ames on the 25th of July. Is that correct?

Mr. Moog: Well that was me or someone else. I am not quite sure ~~what those initials mean.~~

Mr. Shibley: Well, Mr. Johnson has said this resulted from conversations with you.

Mr. Moog: That is quite possible then.

Sept. 4/73
10:50-10:55 am
PLG

Mr. Shibley: Now then, with respect to this

document, you will notice that on July 25 you ~~are~~ are now instructing Ames, "Swiss 20 first year, 20 second year, don't want amortization". That would be ~~the~~ ^{full Swiss} financing that Mr. Candy also reported upon to Hydro on July 19, would it not?

Mr. Moog: You are referring to the top of the

July 25 memo?

Mr. Shibley: Yes. Does that relate to the full Swiss financing that Mr. Candy was reporting on?

Mr. Moog: I am not sure that it relates to the same thing, but at one time we did entertain the idea to go back to ~~Swiss~~ Switzerland and see what we could do, as I said earlier. And naturally I used whatever there was as a lever to A. E. Ames or to anybody else that if you don't have the money I will get it elsewhere.

~~Mr. Shibley: Well Mr. Moog, I am only~~

Tape 2008 follows

September 4, 1973
10.55 - 11.00 a.m.
M.R.

~~(Mr. Moog)~~

~~... just whatever there was to A.E. Ames or anybody else, that if you don't have the money, I'll get it elsewhere.~~

Mr. Shibley: Well, Mr. Moog, I'm only concerned because ~~...~~

Mr. Moog: I don't even know what ~~this one says~~.

Mr. Shibley: ~~...~~ Mr. Candy was reporting to Hydro on July 19 that at that time you anticipated the financing would be fully Swiss and that this document seems to accord with that, in that you were now instructing Ames ~~...~~

Mr. Moog: Well, instructing, Mr. Shibley, is a ~~very~~ severe word.

Mr. Shibley: Oh, I'm sorry. Then you were ~~...~~

Mr. Moog: These are very loose conversations we've had and I want to just give it the same flavour they really had ~~and~~ when I talked to Ames and maybe Ames said to me, "Well, interest rates are going up in Canada or North America" or something like that. I'm not saying they did or they didn't ~~and~~ and I said, "Well, look, if you don't - if you can't do it here, I can do it there."

It's negotiation. It's quite a normal thing to do. And I wasn't instructing anybody specifically because it dawned on me if I had to do Swiss financing, I would have to stretch it out over a few years or do something different, or go naturally with a different source of financing, too.

Mr. Shibley: Well, we'll characterize what it was you had at that time later on.

Mr. Moog: ~~I don't know what this means.~~ ~~... Inaudible...~~

Mr. Shibley: At the moment, you were telling Ames on July 25th about Swiss financing which would be advanced over two years - \$20 million the first year; \$20 million at the ~~...~~

September 4, 1973
10.55 - 11.00 a.m.
M.R.

Mr. Moog: That's what this indicates.

Mr. Shibley: That's right. And you say - at least, there is a note here, I'm sorry, "would like to take six and a half per cent - lend to institution - Sun Life - lend to Moog \$40 million over 30 years at one per cent profit."

Now, do I take it what's meant there is one per cent profit to the company, such as Sun Life, that would implement this transaction?

Mr. Moog: I suppose that this is what this could mean. Mr. Johnson could perhaps enlighten you on that but it's quite possible.

Mr. Shibley: Were you talking about a one per cent profit to yourself?

Mr. Moog: No. No. No.

Mr. Shibley: I didn't think so.

Mr. Moog: No. No, this would be a transaction if Canadian companies were short, ~~and~~ obviously this was one idea we had in our minds, Mr. Shibley.

Mr. Shibley: I understand that. That's why I led you the other way because I wanted ~~to~~ ^{to} clear ~~the~~ the committee's mind on that. Now, then ~~and~~ ^{and}

Mr. Chairman: ~~That would be~~ ^{Not} a very big profit, wouldn't you say?

Mr. Shibley: ~~It~~ mentions no exchange risk and so on. I don't think we need to deal with this document further, Mr. Moog. That's four pages, we can skip to the next document, which is an explanation really of Mr. Johnson as to what he understood by what you told him and this has a enumerated one in a circle at the upper right-hand corner.

Mr. Moog: Yes, I've got that.

Mr. Shibley: It says: "1. Borrow the equivalent of \$40 million Canadian in Swiss francs on a 15-year term loan at six and a half per cent. 2. In return for supplying this money to a Canadian institution obtain from it a mortgage commitment for \$40 million Canadian fully amortized over 30 years at seven and a half per cent".

September 4, 1973
10.55 - 11.00 a.m.
M.R.

(Mr. Shibley)

So that this is, I think, what Mr. Bradshaw called a "wraparound" type transaction.

Mr. Moog: I think you could even call it a put-through.

Mr. Shibley: I'm trying to avoid that term. It would seem to offend so many people. And there is some calculations that Mr. Johnson will explain, I'm sure, as to the return on investment by whatever company did the put-through. But this is a document, again, which Mr. Johnson has said he created these notes some time during the ~~period~~ period July 25 to July 28. So that at that time in 1972, I take it, you continued him in the understanding that he should be working on that kind of a deal? Is that correct?

Mr. Moog: It was one avenue we explored. I think, if I read these correctly, and Mr. Johnson can certainly comment better on that than I, is that we wanted to get around that balloon payment ~~axfx~~ and a few other problems we had if we were to borrow from overseas and if the Canadian companies or the North American companies wouldn't come down in rate. Then we had to construct something different. Our aim, Mr. Shibley, and I want to make this clear to the committee and everyone, was to get low interest financing. That was our entire aim in anything we tried to construct ~~see~~

Mr. Shibley: Mr. Moog, I think we all believe that, and understand that.

Mr. Moog: ~~see~~ financially or physically in the building or anything.

Mr. Shibley: Yes. Now, what I want to know from you is this: Had you received some indication from a Swiss syndicate ~~see~~

Mr. Moog: No, sir. Nothing ~~any~~

Mr. Shibley: ~~see~~ that they would advance \$40 million over a term of ~~see~~

September 4, 1973
10.55 - 11.00 a.m.
M.R.

Mr. Moog: No, Mr. Shibley, I did not.

Mr. Shibley: ~~by~~ two years?

Mr. Moog: I gave evidence to that and my evidence as it was given is absolutely correct.

Mr. Shibley: Well, I feel I must ask you this,

Mr. Moog. The Swiss banker you met in May was due to be

~~back in Switzerland in May~~

H-2009 to follow

H - 2009 - 1

(Mr. Shibley)

~~and you said, Mr. Moog, the date was~~
~~due to be~~ back in Switzerland in mid-June, according to the -----

Mr. Moog: I never had any conversations with him
ever again.

Mr. Shibley: I see. All right. You are ^{saying} ~~there~~ then
there hadn't been any conversation.

Mr. Moog: These are ideas in my own mind.

Mr. Shibley: All right. Well then, I want to go to
the next document with you, the one dated July 28th, 1972. That
is the one where the date is a little bit scrambled at the top.
Have you got it? It is a short document.

Mr. Moog: Yes.

Mr. Shibley: And this appears to indicate that Mr.
Johnson attempted to arrange the put-through with Metropolitan
Life and you will notice at the bottom it says "would go straight -
but for 30 years @ 9 1/2 to 9 3/4 - don 't want to go beyond 15
years without inflation hedge". Did Mr. Johnson report this
information to you?

Mr. Moog: I don't recall that.

Mr. Shibley: Did you have information that accords with
this, that to do a straight deal - I gather this means not a
put-through deal - what Metropolitan Life wanted was 9 1/2
to 9 3/4 per cent interest?

Mr. Moog: I cannot recall that that was relayed on to
me. I was aware of the fact that rates were starting to climb
and that they were, of course, well, quite a bit higher than
eight per cent, which is what I was aiming for.

Mr. Shibley: And of course when you are talking in
eighths of a per cent being meaningful, the difference between
eight and nine and a half and nine and three-quarters -----

Mr. Moog: Very meaningful indeed.

Mr. Shibley: All right. Let's go to the next document,

H - 2009 - 2

(Mr. Shibley)

August 3, and this appears to be a note of a communication with Sun Life: "unwilling to commit out 15 years - unnecessary to borrow as they have uncommitted cash flow", so that again this was an attempt to have Sun Life do the put-through, which failed. Is that right?

Mr. Moog: I wouldn't know about that. I have no idea what happened between Sun Life and Ames.

He didn't communicate this to you.

Mr. Shibley: All right. Then I want to take you to the next document, of August 4, 1972, and this appears to be conversation between Mr. - at least Johnson has said it was ~~his~~ conversation with Bradshaw, the upper portion of it, on August 4th - and you will notice it ~~as~~ says "Hydro is doing financing now; will only do one every three years, therefore no money for Moog. Will leave in abeyance for time being. Suggest contact either REB or JGD if information required".

Now then, starting with the date of that communication, Mr. Moog, Mr. Bradshaw has given evidence of a telephone conversation, a three-way telephone conversation, between you, he and the same Swiss banker that you met on August 13, 1971, in the company of the Premier.

Mr. Moog: Right.

Mr. Shibley: And he has given evidence that that banker was exercised and upset - you heard his evidence in that respect - and this appears to indicate that the knowledge - I am sorry, he was exercised because Hydro had done other financing which interfered with your ability to fund this project with Swiss money.

Mr. Moog: Now, just a moment, Mr. Shibley, no he didn't say that. I didn't even get around to discussing my building at all with him.

Mr. Shibley: I am sorry. Let me put the question another way. He was exercised because Hydro had done other financing and not through his group, all right?

H - 2009 - 3

Mr. Moog: The emphasis being not through his group, right.

Mr. Shibley: All right. In any event - and this made it clear in any event - whatever interpretation you want to put on it - that you were not going to be able to get Swiss money for a put-through deal, is that right?

Mr. Moog: Let me just bring that one in proper context. I believe - maybe you can give me the date of that phone conversation?

Mr. Shibley: August 7th, 1972.

Mr. Moog: August 7th?

Mr. Shibley: Yes. You are noticing the date on this memorandum is August 4, and my next question is going to be "did you have an earlier communication"?

Mr. Moog: No, I didn't, that is what I was positive about myself. I would have thought this would have been after the phone call, but I think we might have already known somehow - well as a matter of fact we did know that you can only get \$20 million in one particular year, but to deal with the phone call ----

~~Mr. Shibley: I just want to tell you what Mr. Moog said about the phone call. It is at Hammond 11.01 and he said~~

Tape H - 2010 follows

Sept. 4/73
11:05 - 11:10 am.
M.S.

(Mr. Moog)

~~...but to read deal with the phone call.~~

Mr. Shibley: I just want to tell you what Mr. Bradshaw said about the phone call. Hansard 1581-1; he said, "In reviewing my dockets,...", and he'd spent the afternoon in review. "...I have discovered that in August, before -----"

"Mr. Shibley: August '72?

"Mr. Bradshaw: Yes. In August, '72, before I went to New York with Mr. Moog - I will ~~give~~ give you the exact date - August 7th, '72, Mr. Moog was at my office and together we placed a phone call to Switzerland to a gentleman whose name I am not going to read out for the record, but I will be ~~and~~ glad to write it down and give it to you, if you like."

And he did and I identified that name as one of the two Swiss bankers you met on August 13 of 1971. Then it goes on and he says, on the next page he talks about the German conversation, "...my impression from the conversation was, that there was no possibility whatsoever for borrowing in Switzerland for the Hydro project at that time." Now this is in August of '72, after..." and I ask you to note because I want to ask you about this also H "...after I had been instructed to prepare the agreements. And I understand the reason that there was no possibility was because Hydro had itself borrowed in Switzerland and their rules of this ..." And he goes on.

Now, then, do you want me to read more?

Mr. Finlayson: Mr. Shibley, isn't it quite apparent that Mr. Bradshaw's evidence was that the phone call in which he first learned that the Hydro financing had taken away this potential Moog money was August 7?

Mr. Shibley: Correct.

Mr. Finlayson: It's also apparent that Mr. Bradshaw spoke to Mr. Johnson and relayed that information to Mr. Johnson. And either Mr. Bradshaw is mistaken about having heard that on August 7, or Mr. Johnson is mistaken about noting the conversation with Mr. Bradshaw on August 4.

Mr. Shibley: Or there was an earlier communication between someone in Switzerland ~~any~~

Mr. Moog: It's not that complicated.

Shibley: ~~Mr. Moog~~ ~~any~~ and Mr. Moog and Mr. Bradshaw.

Mr. Finlayson: Well, I'm just taking Mr. Bradshaw's testimony, which referred to dates. He says that he first heard it in this one conversation. So obviously either he's mistaken or Mr. Johnson's mistaken as to the actual date of the telephone conversation.

Mr. Moog: I don't think this refers to a telephone conversation, George, with all respect.

Mr. Shibley: I'm in a little ~~any~~

Mr. Finlayson: Don't you?

Mr. Moog: No. I think that's information which obviously Ames must have obtained themselves. There's nothing strange about that.

Mr. Shibley: Well, then, Mr. Moog ~~any~~

Mr. Moog: On August 7 I touched base and called that bank which I know was very knowledgeable in the financial community. Before I could even get around to my approach before mentioning it, I got a blast.

Mr. Shibley: What disturbs me a little bit, Mr. Moog, is it appears that in addition to the communication made with Mr. Bradshaw and you on the 7th, that some three days earlier there was information within the Ames firm of the problem.

Mr. Moog: I think Mr. Johnson can answer that. I am sure somehow or other he would know that.

Sept. 4/73
11:05 - 11:10 am.
M.S.

Mr. Shibley: Well, the one question I asked him this morning was, "were these notes of information provided to you on August 4th?" And he said, "yes."

Mr. Henderson: Mr. Chairman

Mr. Finlayson: Did he say he got it from Mr. Bradshaw?

Mr. Shibley: I think he did, but *** I could stand corrected on that.

Mr. Henderson: Mr. Chairman, do you take it that Mr. Bradshaw supplied this to Mr. Johnson in this phone call?

Mr. Shibley: I ~~thaw~~ thought he had, Mr. Henderson.

Mr. Henderson: I'm wondering if we could have that clear as well.

Mr. Shibley: Yes, but let's leave that question until we deal with Mr. Johnson. At the moment, what's disturbing me, Mr. Moog, is it appears that three days earlier than your phone call, Mr. Johnson

Mr. Moog: I had no communications. I had no knowledge other than, I think, general knowledge that you can only get \$20 million a year and that was that.

Mr. Henderson: Mr. Chairman, this really isn't the \$20 million a year. This is the fact that it's gone.

Mr. Shibley: I beg your pardon?

Mr. Henderson: This is the fact that Hydro has taken up that \$20 million.

Mr. Moog: Maybe Johnson knew about that.

Mr. Shibley: Well, the point, Mr. Moog, that I'm trying to ascertain is this, you have disclaimed communications with that same Swiss bank.

Mr. Moog: I haven't had any other communications ~~than~~ the ones mentioned.

Mr. Shibley: And I'm concerned to know...

~~(Mr. Moog)~~

~~I haven't had any other communication since the~~
~~ones mentioned.~~

Mr. Shibley: And I am concerned to know whether you had in fact, earlier communication with that same Swiss bank, even prior to the telephone communication that Mr. Bradshaw by his ~~character~~ ^{dockets} was able to identify quite explicitly as having taken place on August 7.

Mr. Moog: I think you have got all my communications, Mr. Shibley, and Mr. Bradshaw enlightened us on the phone call which didn't even get around to the ~~Wash~~ Hydro building, and that was that.

Mr. Shibley: Well now, the other part of what I read to you was, you remember Mr. Bradshaw said that this conversation took place after he had been instructed to prepare the agreements, so that do I take it that as of the time he was instructed to prepare the agreements, what was then in contemplation was a put-through of the 20-20 type?

Mr. Moog: Mr. Shibley, please. Things became serious when we came to the agreement stage and it was then that we had to come up somehow or other with the money. We had ^{our} ~~no~~ knowledge of markets. No, it wasn't really anything like that.

Mr. Shibley: You see Mr. Bradshaw could not disclose privileged information so I couldn't ask him these questions, but I am going to ask you. What I want to know is, as at the time Mr. Bradshaw received his instructions, which was on August 3, 1972, to draft the documents, was the format of the transaction as now disclosed by the Ames file, wherein on July 25, having resumed contact with them, you were informing them as to the basic structure of your permanent financing?

Mr. Moog: Mr. Shibley, I haven't informed ~~of~~ them, ~~about~~ or instructed them or anything like that. We had very general discussions on how to get our interest rate down to an interest rate I could live with and give ~~the~~ Hydro the building I contracted for, or what I had in mind to give them, and

Sept. 4/73
11:10-11:15 am
PLG

(Mr. Moog)

and it was very difficult to crack that market down to the 8 percent, so we had ideas about borrowing in Europe, we had ideas about borrowing in the States. I had ideas of my own. We discussed them. ~~There~~ There is no significance to this.

Mr. Shibley: Well, Mr. Moog, the only Swiss bank that you had been in communication with as of July, 1972, was the same Swiss bank was it not?

Mr. Moog: Yes. That was the only Swiss bank.

Mr. Shibley: So when you gave this information to Ames on July 25...

Mr. Moog: I haven't had further notice from them on anything. I haven't dealt with them any further. It wasn't really dealing. It was an exploratory situation. I knew from them that there was money at that rate. I also knew that if I went to my friends and perhaps got some lesser institutions involved ~~who were~~ less stringent in their requirements, that somehow or another I could raise money over there, if the North American market dried up earlier than I would have hoped ~~it~~ to dry up. I just had to get this money somehow so I ~~just~~ discussed it, and when I talked to Ames, I obviously showed them a pamphlet I had on my desk and said, "Well, this is the sort of money which is available in Switzerland".

Mr. Shibley: Mr. Moog, I want to refer you -- we know know or understand, the reason you couldn't pursue ~~the Swiss~~ source of funds was because Hydro ~~had~~ had borrowed for other purposes. Is that correct?

Mr. Moog: I was told that in the phone conversation and I was just as perplexed about it ~~as~~ Mr. ~~and~~ Bradshaw was.

Mr. Shibley: Yes. Now I want to refer you to what you said to this committee in Hansard page 1444-1 on July 25, 1973. In the middle of the page I said:

"Mr. Shibley: Well, quite apart from a commitment, you see Mr. ~~the~~ Moog, when I said the other day,"
and we were debating the relevancy of the file because Mr.

(Mr. Shibley)

Finlayson said the financing was never Swiss, and so the file was irrelevant, and this is what has bothered me since he made that comment. I said to you then:

"Well that opens up another area of inquiry" and this is the area of inquiry I am on now. On the bottom of the page:

"Mr. Shibley: Well for the matter, if you would get over the amortization problem"

and then at the top of the page:

"Mr. Moog: No. I am not talking that bank at all."

Mr. Renwick: What number was that?

Mr. Shibley: 1444-1 and ~~now~~ now I am at the top of

1444-2.

Mr. Bullbrook: What volume is that? Fourteen?

Mr. Chairman: ~~Fourteen~~ Well, fourteen in my volume. I gather ~~Mr.~~ they are not all the same.

Mr. Shibley: It is for the date of July 25, late afternoon.

Mr. Bullbrook: Could you give us the page number again?

Mr. Shibley: 1444-1 is where I have read from and I am not at 1444-2 at the top. You say:

~~"Mr. Moog: No. I am not talking that bank at all because that bank"~~

Tape H 2012 follows

September 4, 1973
11.15 - 11.20 a.m.
M.R.

"Mr. Shibley: You'd abandoned that?"

"Mr. Moog: I considered that deal pretty dead

once I got that final letter you just read."

That was the November 18, 1971, letter.

Mr. Moog: Right.

Mr. Shibley: "...~~was~~^I considered that

deal pretty dead. But I was aware that there are other sources" and so on."

Mr. Moog: Yes.

Mr. Shibley: And then on the next - the next

reference I have is 1438-2 - about the middle of the page

Mr. Moog: 14 - Pardon me?

Mr. Shibley: 1438-2, about the middle of the page.

"Mr. Moog: Mr. Shibley, I know this is difficult

to understand and maybe I have to be a bit more elaborate on it. With that particular institution I think it would been impossible to get them to bend and to come with an amortized plan of payment, and therefore, I never discussed any details with Mr. Candy at all."

Then on 1444-1 - that's where I was - I can go right to 1444-2 at the top and this is a specific answer;

~~"Mr. Moog: No, I cannot find it at all."~~

H-2013 to follow

(Mr. Shibley)

~~_____~~
"Mr. Moog: No, I am not talking that bank at all because that bank, I had no more communications with."

Moog:

Mr. ~~Moog~~ Regarding the Hydro building.

Mr. Shibley: Then, I'll go on. The point of the matter is is that you did have a communication with that same bank.

Mr. Moog: Now, just a moment, let me clear this up.

Mr. Finlayson: Mr. Shibley, with great respect, you remember the conversation was in German and the only evidence that you have had is what Mr. Bradshaw's impression was. You have not asked Mr. Moog what he said to the man in German and I think, with respect, you ~~are~~ ought to ask ~~me~~ him what that conversation was.

Mr. Shibley: Mr. Bradshaw -

Mr. Finlayson: You're assuming -

Mr. Shibley: I will, thank you for reminding me of that. I will ask him of that, but I ~~will~~ remind you that Bradshaw testified that the impression he got was ~~that~~ there wasn't Swiss money and I think Mr. Moog has confirmed it, because Hydro had otherwise funded it there was no money available for you.

Mr. Moog: I ~~did~~ didn't know it until that phone call because I wasn't in touch. I just touched base to get information about money markets. They are very competent people. I've been ~~dealing~~ dealing with them for so long, but they themselves would have not been the right source for us because they just wouldn't ~~have~~ have been suitable. I never got around to discussing the Hydro building with that Swiss banker and I think that is really what I relate my thinking to.

Mr. Shibley: Except that on July 25 your information upon which ~~the~~ Ames were working is \$20 million - \$20 million - \$40 million Swiss and Bradshaw gets his instructions to draw the documents, whatever they are, on August 3. On August 4 ~~there~~ there's a memorandum and August 7 there's a telephone conversation in evidence of a communication with that same Swiss bank whereas

Sep 4/73
11.20 to 11.25 am
fvk

(Mr. Shibley)

you've testified you had no more communication with that bank.

Mr. Moog: Relative to the Hydro building, I never got around to ever ~~discussing~~ discussing the Hydro ~~an~~ building.

Mr. Shibley: Were you not calling them, on that occasion, about the Hydro building?

Mr. Moog: I was calling to say "Hello" and I got a blast and I was informed that there was financing done for Hydro by that bank or by at least another banking firm.

Mr. Shibley: Mr. Finlayson has suggested that I ask you what you said in German and I do ask you that.

Mr. Moog: I think I have made that point already. I never got around to that and I apologized. I said I had no idea that there was any other financing happening in Germany, or in Switzerland, and I apologized and I certainly had nothing to do with it. It was clear to me that that bank took Hydro financing, whatever type of Hydro financing, in the same bank. They never differentiated about anything.

Mr. Shibley: Was the purpose of placing that call to ~~an~~ ascertain from that same Swiss bank if moneys were available for the Hydro building?

Mr. Moog: To ascertain what the situation in Switzerland was, Mr. Shibley.

Mr. Shibley: For the Hydro building.

Mr. Moog: In general. Really, that bank wouldn't have been able to do a deal with us because they are very, very set in their rules. They are, I think, one of the ~~the~~ largest, and what I would have done is perhaps get some other underwriting done in Switzerland where maybe some other countries would have even participated, but I would have liked to have a ^{an} ~~tenor~~ feeling from ^{an} one of the top institutions what the market looked like.

Mr. Shibley: Are you saying ~~the~~ this conversation then did not relate to ~~any~~ enquiry respecting the financing for Hydro?

Mr. Moog: It ~~was~~ relates to general information ~~was~~

Sep. 4/73
11.20 to 11.25 am
fvk

(Mr. Moog)

about financing, about financial markets. That's what it relates to. That's what I wanted to know from that gentleman, that's all.

Mr. Shibley: And yet Mr. Bradshaw established the date by relating it to his docket and I took it it meant his docket entries for work done on the ~~Hydro project~~ Hydro project for you.

Mr. Moog: I had to get information on money ~~markets~~ markets.

Mr. Shibley: And he also testified that the impression he got was that ~~because~~ because, and I'll just read ~~that~~ specifically, "My impression from the conversation was that there was no possibility whatsoever of borrowing in Switzerland for the Hydro project at that time." Are you saying his impression was wrong?

Mr. Moog: No. I mean from that conversation he certainly got the impression that there was no ~~question~~ question at all about that particular bank. They wouldn't even discuss the Hydro ~~project~~ project or anything because ~~all~~ all they said to me was that they ~~were not the lead bank~~ ~~in the last financing~~ Hydro did and they were very upset about that.

Mr. Bullbrook: Why should they be upset with you, Mr. Moog?

Mr. Moog: I suppose they might have expected to get the contract, or something, to be drawn into the negotiations. That's one possibility.

Mr. Shibley: I want you to read with me, and the members, your further testimony at 1444-3. You notice your answer is: "If all strings broke and if I could not get the money in North America where I much prefer to finance, ^{as I have} ~~or~~ ^{financed} all ^{my} other projects except the land ~~assembly~~ assembly, ~~I know that I could not get it in Switzerland~~"

(Tape H-2014 follows)

Sept. 4/73
11:25 - 11:30 am.
M.S.(Mr. Shibley)

~~"not get the money in North America ~~where~~ where I much~~
~~prefer to finance. As I have financed all other projects,~~
~~except the land assembly. I knew that I could get money~~
in Switzerland at some very high cost. I believe that
one of the other Hydro officials stated ~~that~~ a lot of
people talk about Swiss money, but when you get really down
to it and you pay all the costs and you convert it into
Canadian and the rest of it, it really isn't advantageous."

And note the words, "That's why we dropped
it."

Mr. Now, Mr. Moog ~~→~~

Mr. Moog: Because it isn't advantageous.

That's why we dropped it.

Mr. Shibley: Now the evidence is that the
reason was that Hydro, having done other financing, moneys
were not available for this purpose.

Mr. Moog: The Swiss situation was something
where I got information; I used it in my negotiations. I
never got any further with it and I made that, I hope, clear
in my evidence.

Mr. Shibley: Mr. Moog, what I'm asking you is
this, why, when you were asked about this the first time
around, why didn't you simply say, "I had one final conversation
on August 7 of 1972 and, having ~~xxx~~ ascertained at that time
that Hydro had done other funding, it was no longer available
for us to pursue Swiss source of funds?" Instead you say the
reason you dropped it was that it wasn't advantageous once
you paid all the interim costs.

Mr. Moog: Because, quite frankly, I never
really thought seriously about getting Swiss money. Only
as an emergency ~~break~~ ^{break}. If I couldn't get it in North America
I knew that somewhere I could arrange it over there. That is
all I thought about. That's all that was in my mind. It still

(Mr. Moog)

would be, to this moment.

Mr. Shibley: You realize that until Mr. Bradshaw ~~testified~~ testified as to the August 7, 1972 conversation, you never volunteered ~~any~~

Mr. Moog: I said I had one or two more phone calls. That's all I said to you.

Mr. Shibley: In November of '71.

Mr. Moog: No. I said I had one or two more phone calls. It's very difficult for me to recall dates on which ~~.. (insert) ..~~

Mr. Shibley: And you never volunteered the explanation, Mr. Moog, that the real reason you didn't pursue Swiss funds had to do with other funding.

Mr. Moog: No, that's not what I'm saying.

Mr. Finlayson: That's improper, Mr. Shibley. You say ~~he~~ didn't volunteer this explanation, and you put it in your words. ~~has~~ He never volunteered that explanation. He's not volunteering it now. He's making it perfectly clear that as of August of 1972 he still didn't seriously expect that he was going to be dealing with this particular group of Swiss banks.

Mr. Shibley: Mr. Moog, I'll put it another way.

Mr. Moog: It was just a guess. I said 'let's call up and see what's going on in Switzerland.' That's all I said. And we made a phone call and ~~I~~ said, 'I want to know what the situation looks like financially ~~and~~ the markets.'

Mr. Shibley: Mr. Moog, having had that conversation on August 7, you treated that as completely excluding the possibility of getting Swiss money from any bank. Is that not so?

Sept. 4/73
11:25 - 11:30 am.
M.S.

Mr. Moog: Well, many things happened at the same time, Mr. Shibley, because I was also realizing that there was still a pretty good chance of financing in North America, which is really what I always looked at. Don't you see what I tried to do? I tried to make sure that I had a reserve over there if all strings broke and I would have had to put a couple of little banks together and have underwriting done and maybe underwrite it all over Europe. But maybe lent in Switzerland, not by the institution I talked with, because that thing was just not suitable for my purposes. But, in the meantime, the money market did hold up reasonably well, still, before the storm broke loose at that particular time. So, I concentrated more and more on the American money and I used this Swiss situation in my negotiations. Of course I did. What's so strange about that?

Mr. Shibley: Mr. Moog, I think my memory's correct that even Hydro were not alert to the fact that their funding had crossed you up, so to speak, until they heard ~~that~~

Mr. Moog: They didn't cross me up at all. I never considered it really that seriously.

Mr. Shibley: I see. But when you said that the reason you dropped it, namely dropped Swiss funding, is ~~that~~ it isn't really as advantageous once you convert it.

Mr. Moog: Let me explain a bit more to that very aspect you ~~are~~ are at right now, because I think we have to get into that one. You see, Swiss funds are still backed up by gold. North American funds are not. The ~~exchange~~ exchange rate and all these problems are quite significant, and I didn't want to get caught up in all that. And it ~~became~~ ^{that the} more and more evident. ~~The~~ more our North American situation deteriorated, the stronger the Swiss situation

Sept. 4/73
11:25 - 11:30
M.S.

(Mr. Moog)

became. And, quite frankly, if I would have followed it up, it wouldn't have been good for Hydro either. Nor for myself, if I had to re-finance 15 years or 10 years or 12 years, or whatever the terms were. Like Y and R, let's open it up in 10 years from now. I didn't want to do that and I never proposed this to Hydro.

Mr. Shibley: Then on page 1445-3, I asked you, you were talking the same way, about a third of the way down:

"Mr. Moog: That would be my thinking. Again it is all hypothetical. I never got further into it."

We're talking about the put-through and so on.

"Mr. Shibley: I see. Now then did you have any further correspondence with any bank in Switzerland pending July 19, 1972, referable to funding the head office building of Hydro?

"Mr. Moog: No, sir.

"Mr. Shibley: Did you make trips to Switzerland?

Mr. Moog: No, sir.

"Mr. Shibley: Did you call Switzerland?

"Mr. Moog: I call Switzerland quite frequently, I have friends there.

~~_____~~

Tape H 2015 follows

Sept. 4, 1973
11.30-11.35 a.m.
M.F.

H - 2015 - 1

(Mr. Shibley)

~~"Mr. Moog: I called Swiss bank quite frequently, I have friends there."~~

"Mr. Shibley: Referable to the head office?

"Mr. Moog: No."

Mr. Moog: I don't know what time period that refers to.

Mr. Shibley: I see. But again you didn't think that ----

Mr. Moog: I did make a reference to a call or two, I didn't really know what all happened at one particular time, that is very difficult for me to recall that.

Mr. Shibley: Now then, with respect to the May 15, 1972, letter you gave evidence as follows at 1446 - 3, at the bottom of the page you said:

"I am sorry to have to explain because it really has nothing to do other than that this gentleman happens to also be from Europe and be from that Swiss bank, But he was a guest speaker here, I didn't know him before, I met him here and he invited me to the hotel".

"Mr. Shibley: All right. That's why I couldn't understand your counsel's interjection."

Then on page 1447 - 1 at the top:

"Well this letter was simply written by this gentleman when he was in the Canadian office and I ^{extended} ~~sent~~ my greetings to the other ^{two} gentleman and also told them that I was very sorry that we couldn't follow through with their bank any further".

Mr. Moog, you did follow through with ^{their} ~~the~~ bank in August of 72, or attempt to.

Mr. Moog: Mr. Shibley, I made a phone call which took a few minutes and I tried to ask him what the markets were like and what the financial situation looked like in Switzerland and I got a blast and that was the end of the phone call.

Mr. Shibley: I see. Well then I take it at 1455 - 1 -----

H - 2015 - 2

Mr. Finlayson: I think, Mr. Shibley, I think you ought to be at 1447 - 4, you would still continue on with that letter where you say -----

Mr. Shibley: 1447 - dash?

Mr. Finlayson: Dash 4.

Mr. Shibley: Thank you.

Mr. Finlayson: Right down to the middle of 1448 - 1.

Mr. Shibley: All right. Would you like to read that, Mr. Moog?

Mr. Moog: Where are we - 1447 - 4 - my remark?

"You had a meeting with a representative of the self-same Swiss bank in that interval and I want to know whether you discussed with him the financing of the Hydro head office building at that time and whether it wasn't part of that discussion that they wanted to provide the whole of the funding and not go halves with a U.S. corporation.

"Mr. Moog: No, sir, Mr. Shibley, that was not, and that was quite a side issue. This was a very interesting gentleman. I met him with his wife and I expressed my" - whatever it is.

Mr. Shibley: At the top of 1448 it goes on.

Mr. Moog: "And I expressed myself that we couldn't have gone any further this bank, which I respected highly." I expressed my - I suppose my sorrow ^{it} should say.

"Mr. Shibley: ^{Gone} ~~any~~ any further with this bank, in what regard?

"Mr. Moog: Well -----

"Mr. Shibley: In what regard?

"Mr. Moog: In regard to the Hydro financing.

"Mr. Shibley: So you did discuss with him the Hydro financing at that ~~the~~ meeting?

"Mr. Moog: I mentioned it in that connection, Mr. Shibley.

"Mr. Shibley: You did discuss it with him?

"Mr. Moog: I mentioned it in that connection, yes.

H - 20015 - 3

" Mr. Shibley: Yes. Now having got you to the point of discussing the Hydro head office funding with ^{him} /in May - when was this meeting in Toronto in May?

" Mr. Moog: It was preceding ^{this} ~~it~~ was after the meeting when he was leaving from here to go to ~~the~~ other cities."

Mr. Finlayson: *That is as far as I thought we should read out.*

Mr. Shibley: ~~That is as far as I thought we should read out.~~ Then I want to take you to 1455-1, at the bottom of the page, just the last sentence on that page, Mr. Moog, Are you with me yet? 1455.

Mr. Moog: Yes.

M r. Shibley: Right at the bottom: "Was the bank that you contemplated receiving the funds which would be put through Equitable, funds that you expected to receive from that same bank?"

" Mr. Moog: No, they were not. They could have been from anybody in Switzerland.

" Mr. Shibley: Could they have been from that bank?"

" Mr. Moog: No, their terms didn't suit me. ~~Some~~ Their terms wouldn't suit Equitable either."

" Mr. Shibley: Well now let's talk about that for a minute. Would it not have been possible to overcome the amortization that you said was a major difficulty by having Swiss moneys loaned to Equitable on terms acceptable to the Swiss as to repayment and having the amortization of repayments on the relending of the money take place in the transaction inter se Equitable and your firm?"

" Mr. Moog: I never put it to them but maybe you should, Mr. Shibley, you are a very good negotiator. I have not done that!"

Now, Mr. Moog, when you instructed Ames and the document ~~was~~

~~Mr. Moog: I didn't instruct Ames. This was a very general deal with Ames.~~

~~Mr. Shibley: I am sorry when you provided them with the information the document which was prepared by~~

Tape H - 20016 follows

~~Mr. Moog instructed Ames and the document, dated 12~~

Mr. Moog: I didn't instruct Ames. I discussed this in a very general way with Ames.

Mr. Shibley: All right. When you provided them with information, the document which is prepared by Mr. Johnson, "borrowed the equivalent of 40 million, in return for supplying the money to the Canadian institution obtained from it," which is done as a result of the July 25, 1972, discussion, then you place a call with Mr. Bradshaw to the same Swiss bank, how do you reconcile the answer you gave earlier as to not contemplating doing the put-through with the evidence that is now before this committee as to what you did with Ames and what you did with Bradshaw on August 7?

Mr. Finlayson: Mr. Chairman, with great respect, it seems to me that we went over this ⁱⁿ ~~and exhausted~~ exhaustive detail once before and I am just wondering what the point of this is. It is really getting a little argumentative ^{at} with respect.

Mr. Shibley: Well, I have two purposes Mr. Chairman; one is this: I think it is important to the credibility of Mr. Candy who was reporting to Hydro certain information as to the ^{the} basis upon which financing was going to take place. I think it is important to understand what ~~the~~ representations were being made to Hydro. Mr. Moog has played it down as all being hypothetical, whereas it is important to ascertain whether in fact Hydro believed that arrangements in this connection were more firm ~~than~~ than he led the committee to believe. I must say that it goes to the credibility of Mr. Moog himself, and you will remember Mr. McCallum said that on a developer type of proposal, a great deal hinges upon the good faith of the developer. I am concerned to go through this earlier testimony, and I only have a few more references, to permit Mr. Moog his opportunity to explain what I consider to be, and it is my own view only, ^{but} ~~that~~ at the moment what I view as possible inconsistencies between the evidence that Mr. Bradshaw gave, the evidence that is now evident in the Ames file, and the prior

Sept. 4/73
11:35-11:40 am
PLG

(Mr. Shibley)

testimony of Mr. Moog. Now if there are explanations, they should be a matter of record so that when we come to ~~deliberate~~ deliberate upon the question of a credibility and remember, on one issue in particular there is a direct conflict between Mr. Candy and Mr. Moog ~~in~~ vis-à-vis the July 18 memorandum that surfaced out of Mr. Bradshaw's file. Now I have got many reasons and I think they are all valid, and Mr. Moog I must tell you now that I am as interested in having you explain away any of this earlier testimony which to my mind is at least confusing with the subsequent testimony, or to determine whether it is inconsistent.

Mr. Moog: I will be very happy Mr. ~~Chairman~~ Shibley.

Mr. Shibley: All right.

Mr. Renwick: Mr. Chairman, I'd like to say one or two things on this matter so far as it comes through to me. I consider that on the evidence before us of Mr. Moog that ~~that~~ there is a contradiction hinging particularly with respect to his statement that there were no further communications with the particular Swiss bank after November, 1971.

Mr. Moog: Relative to the financing of the Hydro building, which is important to me in my thinking, Mr. Renwick.

Mr. Renwick: Just a moment now. The committee is dealing with the Hydro building. That is the terms of our reference. ~~I am most anxious that Mr. Moog understand clearly the import of what is of concern to me.~~ I think, on the face of the evidence ~~before~~ before us, that ~~that~~ there is a contradiction between the evidence that the last communication you had from the bank was the letter in November of 1971, a contradiction between that fact and the ~~fact~~ fact that just prior to July 19 when the commission approved of the contract of negotiating the contract with your company, Mr. Candy came to find out specifically the question of financing and you confirmed to him that it would be in Swiss ^Cfrancs.

Mr. Moog: I anticipated to him I think is what was said.

September 4, 1973
11.40-11.45 am
V.H.

Mr. Renwick:

Sufficient confirmation that Mr. Candy related that to the Commission as a fact at the time of the Commission decision, that subsequently there is the memorandum of Mr. Bradshaw of July 25 and the notes in Mr. Bradshaw's file of his conversations with -- in Mr. Johnson's file -- of his conversations with Mr. Bradshaw, and then there is the fact of the telephone call to Switzerland at which you were present with Mr. Bradshaw and the call was placed from Mr. Bradshaw's office, on Mr. Bradshaw's evidence, on August 7 but there is some contradiction that it may have been on the preceding Friday, August 4.

Mr. Shibley: Or there may have been two communications.

Mr. Renwick: Yes. Now, my concern ...

Mr. Moog: ~~That I think probably~~ ^{Not} from Mr. Bradshaw

~~and~~ ^{or} myself.

Mr. Renwick: My concern, Mr. Moog, is not about ~~the~~ those particular factual matters at that time, but it relates very much to the decision I am going to have to make on the ^Ucredibility of another question. There are marginal things which flow from it or important things which flow from it, but the question which concerns me and where I have got to be able to say ^{about} ~~that~~ Mr. Moog's evidence before this committee ^{that} I am prepared to accept it or that I am not prepared to accept it, because it is very important, is having established to my satisfaction that there was a close two-way communication between you and Mr. Candy over an extended period of time leading up to the award of the contract to you for the Hydro building, ~~you have~~ in direct answers to questions placed by myself as well others focusing on the question I put to you, ^{you} have stated that you at no time had any knowledge of the internal deliberations of Hydro in any way with respect to these matters.

Sep. 4/73
11.40-11.45 am
V.H.

Mr. Moog: That is correct.

Mr. Renwick: Now, for me to believe that statement, or to assist me in believing that statement, which I want to do because it is evidence given by you under oath, I would like you as succinctly as you can to restate the matters related to the conversations with the Swiss bank in August in such a way that I can understand why there is a contradiction on the face of the evidence. In order to help you, let me say that it is, on the evidence, clear to me that the telephone call which originated in Mr. Bradshaw's office at which you were present on August 7th or if that turns out to have been a mistake and it was August 4, if that is the explanation of it, that that conversation related to the Ontario Hydro building financing. That's the way the evidence comes through to me and, therefore, there appears to be a direct contradiction in your evidence related by Mr. Shibley to the remark at the top of page ...

Mr. Moog: Mr. Renwick, first of all, let me say ...

Mr. Renwick: Fourteen forty-four dash two, ~~that~~ "that bank I had no more communications with," and that has been established as referring to the communication in November.

Mr. Moog: I also said I recalled a phone conversation but that particular phone conversation did not relate to the Hydro building simply because we couldn't get around to the subject at all. It was a ...

Mr. Renwick: Mr. Chairman, let me -- I am not asking whether the man at the other end responded with respect to the Hydro Building or whether you got cut off, the evidence appears to me to be clear that the motivation for the call was to ...

Mr. Moog: Was to find out ...

Mr. Renwick: ... was to deal with the question of Swiss financing for the Hydro building.

Mr. Moog: To find out ~~that~~ the status of the money markets in Switzerland and in Europe. ~~This point to be made~~

September 4, 1973
11.45 - 11.50 a.m.
M.R.

(Mr. Moog)

~~to find out the standards of the money markets in~~
~~Switzerland and in Europe.~~ This ^{man,} ~~man,~~ would be very qualified to tell me, just as I could pick up the phone and call Equitable tomorrow and ask them, "Do you think I've really made a good deal with the Prudential?" These are general conversations, Mr. Renwick, and I think these people I do know now, and I hope I will know many more of them, ^tThey can give me a very accurate degree of the temperature of the water, so to speak.

It's very important for me to know which way I should go ~~to~~ from any given point of time. I've made a commitment ...

Mr. Renwick: Mr. Chairman, I don't want to interrupt Mr. Moog but ~~because~~ because of the importance of this to me I ^{think} ~~would~~ if we were to adjourn for a recess for a few minutes, perhaps on reflection ~~with~~ with Mr. Finlayson, we could try to somehow or other, in a clear-cut way, resolve this problem.

Mr. Chairman: I think it is reasonable to take an adjournment now for 10 minutes. We can be back ~~by~~ by five to twelve.

The committee recessed for 10 minutes at 11.45 o'clock, a.m., and resumed at 11.55.

Augm September 4, 1973
11.55 - 12.00 noon
M.R.

Mr. Chairman: I call the meeting back to order.

Mr. Moog, if you would come forward please.

Mr. Moog: I will in just a minute, Mr. Chairman.

Mr. Finlayson: The cameraman is still here.

Mr. Walker: That is a candid camera.

Mr. Moog: I've had enough pictures taken.

Mr. Shibley: Mr. Moog, I don't know whether you want to voluntarily make an answer to Mr. Renwick's last question. Are you ready to proceed?

Mr. Moog: Well, Mr. Shibley, I appreciate your and the committee's effort to clear that point up. I guess the only way I can answer this is that at that time, as you recall, we didn't have as ~~convenient~~ ^{congenial} an atmosphere as we have today and I was pushed pretty hard by you. I certainly didn't think of that phone call until some time later on when Mr. Bradshaw and Mr. Finlayson and I had lunch together and he reminded me of it and I never placed any significance to it. And even at this point I would say that it really had nothing to do with the Hydro building other than trying to find out what was happening over in Switzerland.

But that's the way - I knew there was a phone call or two and I couldn't just relate it any other way. In the heat of battle, I think that's what happened.

Mr. Shibley: All right. Now, let me ask you something else. Why ~~Chairman~~ ^{Chairman}:

Mr. Finlayson: Does that satisfy you, Mr. Renwick? I shouldn't put it that way: Does that complete your inquiry?

Mr. Renwick: As always, Mr. Chairman, I hear the evidence.

Mr. Shibley: The Swiss were upset. The loan, however, the lending that Hydro was doing, while I have it on my mind, was a lending that Hydro would be doing for its own account ~~less~~.

Mr. Moog: Yes.

Mr. Shibley: ...whereas, what you were inquiring about was a loan for Canada Square. Why would there be a conflict?


ASeptember 4, 1973
11.55 a.m. - 12.00 noon
M.R.

Mr. Moog: I think, in fairness, I don't think that they ever really differentiated between Hydro borrowing for their own account and the borrowings at one time discussed ~~for~~ ^{for} the head office. I don't think it made any difference to them.

Mr. Shibley: I just want to complete ~~long~~

Mr. Moog: In their own minds, that is.

Mr. Shibley: ...there's only a few more references and I'll just get ~~one~~



H-2020 to follow

Sep. 4/73
10.00 to 12.05 pm
fvk

~~(Mr. Moog)~~

~~Get the head office. I don't think it would have made any difference with them.~~

Mr. Shibley: ~~I just want to complete this. There's only a few more references and I'll just get your answers.~~

At 1463-2 your answer at the top of the ~~xxxx~~ page - 1463-2; have you found it, Mr. Moog?

Mr. Moog: Yes.

Mr. Shibley: Yes, well, this is your answer.

"Mr. Moog: That's when I talked to Candy about - no, ~~xxxx~~ nothing to do with that. That would be \$40 million ^f Swiss Francs - I'm sorry, \$40 million raised in Switzerland somehow or another, through an underwriting ~~with~~ with a smaller bank and with, well, a different constellation in Switzerland."

Mr. Moog: Right.

Mr. Shibley: Mr. Moog, I remind you that, at the very least, on August 7, 1972, you were calling the same Swiss bank, not a bank in a different ~~xxxxxx~~ constellation.

Mr. Moog: Can I explain, Mr. Shibley? *I think there's a very simple answer to it.*

Mr. Shibley: Yes, I'd like you to.

Mr. Moog: You see, if I had to fall back on Swiss financing, if the North American market would have dried up, I would have had to put together some - a constellation - and that is a ~~xxxxxx~~ situation where we would have probably ~~have~~ gotten Swiss underwriting, where we would have probably approached other countries, through Switzerland, where we might have paid a much larger underwriting fee - I think I mentioned that earlier, too - and in order for me to put that ~~xxxxxx~~ ^{constellation} together and put the unknowns into their little slots, I would have had to find out what the so-called blue-blood financiers would be doing in Switzerland at that time. If I had to fall back on it I had to know what I was really dealing with. As I said earlier, too, I usually try to find that out directly from people who know all the nations.

Mr. Shibley: In any event, Mr. Moog, as at August 7 you knew that Swiss funds ~~was~~ were no longer available for this project?

Mr. Moog: That was for sure.

Mr. Shibley: All right. I refer you to your evidence on Page 1525-1.

Mr. Moog: I wanted to make sure ^(that was) that bank ^{told me} ~~I'm talking~~ ~~that~~ I myself, still at this ~~moment~~ moment, if I had to go to Switzerland I'm sure there are moneys available. I just don't want to leave any misapprehension about that.

Mr. Shibley: Mr. Moog, that's what I want to know.

Mr. Moog: That Swiss bank certainly didn't have any.

Mr. Shibley: Then you were calling them for moneys for Hydro?

Mr. Moog: No, that Swiss bank didn't have - they made it clear to me without me even asking. They had no funds at all.

Mr. Shibley: For Hydro?

Mr. Moog: For Hydro or for anybody in Canada.

Mr. Shibley: I see. Because, you see, on ~~155~~ 1525-1, about one-quarter of the way down, you gave this answer. You were dealing with ~~the~~ the Equitable after August 7 and you said - or in September, 1972:

"Mr. Moog: Well, I never got very much response on it. WE had a meeting at W Equitable, maybe I can just give you a date. Well ~~if~~ I have a letter here which is addressed to Mr. Bradshaw which is dated August 16 and I hope I'm not - I ~~cannot~~ cannot give you an exact date, but when I was down at Equitable I think it would be more than likely that I would use the ~~situation~~ situation of availability of money in Europe as a point of negotiation."

Mr. Moog: Right.

Mr. Shibley: ~~Mr.~~ "Mr. Moog: I want to make that quite clear. I did certainly do that."

Mr. Moog: Right.

Mr. Shibley: So that when you were dealing with the

(Mr. Shibley)

Quiteable you made representations to them that European sources of money were available as an alternative?

Mr. Moog: Right, as competition.

Mr. Shibley: Yes.

Mr. Moog: X That's really what I tried to say.

Mr. Shibley: Did you have in mind the Swiss?

Mr. Moog: Well, I think what I would have had in mind would have been the sort of thing I just talked about a minute ago, ^{that} is to put a constellation of European funds together.

Mr. Shibley: In Switzerland?

Mr. Moog: In Switzerland, or perhaps elsewhere in Europe, too, but ~~it~~ probably headed up in Switzerland.

Mr. Shibley: I've only got two more to deal with you, that's 1534-1. At the bottom of the page.

"Mr. Shibley: Did you ever discuss with Ames a put-through deal?

XMxxxM

"Mr. Moog: I can't recollect that ~~it~~ and I don't think I did. I discussed many things with the gentlemen from Ames but I don't think so."

Mr. Moog: You certainly refreshed my mind with the Ames file this morning, Mr. Shibley. I'm sure we had ^{discussions} ~~discussed~~ on that. I would think that most of those attempts, or at least notes put on paper were done ~~in~~ by Ames themselves because I really didn't ~~didn't~~ have that many meetings with Ames. You can ask Mr. Johnson. He can probably refresh my mind and memory on that.

Mr. Shibley: You carried on with Mr. Johnson of Ames from July 25, 1972 straight through to the end of that year.

Mr. Moog: I've known Mr. Johnson for many, many years and I respect him as one of the outstanding men in the financial community. There's no question about that.

~~Mr. Shibley: But when you first gave your evidence you just had no recollection.....~~

(Tape H-2021 follows)

Sept. 4/73
12:05-12:10 pm
PLG~~(Mr. Moog)~~

~~for many, many years. I respect him as one of the outstanding men in the financial community. No question about it.~~

Mr. Shibley: But when you first gave your evidence, you just had no recollection of the kind of thing that

Mr. Moog: I couldn't recollect whether it was my idea, or whether I kicked it around with somebody else, or not. That is really what I was trying to say there.

Mr. & R. G. Hodgson: Mr. Shibley, in the bottom of the August 4, 1972, memo in the file there is ^a note to JAB with regard to negotiating with U.S. at, probably, equitable.

Mr. Shibley: I am sorry, I have missed the reference.

Mr. R. G. Hodgson: You see the August 29, on the bottom it ~~is~~ ^{goes} over into September but you didn't cover that. ~~all~~
The August 4 memo.

Mr. Shibley: Oh, yes.

Mr. R. G. Hodgson: Maybe Mr. Moog didn't talk to Mr. Johnson. Maybe it was Mr. ~~Brada~~ Bradshaw.

Mr. Shibley: No, but the memoranda ^{you} see, which is replete with references of July 25, 1972; ^{Moog} and Johnson have discussion; 21st year; 22nd year; don't want amortization; 30-year deal rather tight; 6 1/2 percent; One percent profit..

Mr. Moog: I would think it was likely we had discussion on it, Mr. Shibley. Thank you very much. That refreshed ^{my} memory.

Mr. Shibley: It is not open to the interpretation that he didn't have discussions.

Mr. Moog: I think that is quite likely; in view of the ~~mem~~ ^{mem}

Mr. R. G. Hodgson: ^{He had} ~~In view of the~~ discussion with Mr. Bradshaw, though, on the same point.

Mr. Shibley: Now, then, finally Mr. Moog, I want to refer you to 1388-2.

Mr. Moog: I am running out of books.

Mr. Shibley: 1388-2 which is July 25, 1973.

Mr. Finlayson: 1388-2?

Sept. 4/73
12:05-12:10 pm
PLG

Mr. Shibley: 1388. Yes. Actually, I will start on 1388-1. Mr. Finlayson is speaking. At the top of that page:

"Mr. Finlayson: Mr. Moog has testified that subsequently ~~he~~ ^{he} obtained a ~~repeated~~ copy of the report of Hydro" and so on...
64 And as I pointed out in my initial submissions, he then asked two questions in correspondence subsequent to this meeting, both of which ~~was~~ were answered in the negative by the bank in question, under date of November 18. "

And then down the page:

"The ~~stated~~ significant thing is that the feelers for the loan were politely but firmly turned down in November of 1971."

~~Then~~ Then, on the next page, about the middle of the page, second paragraph, middle of that paragraph:

"He wonders why Mr. Candy would still be under that ~~same~~ impression".

~~Now Mr. Shibley I am talking~~

"Now Mr. Shibley argues in reply to the question of relevance"

< That is the relevance of this file that we were debating at the time.

< "That the terms of the proposed loan discussed by Moog on August 13, 1971, were the same ^{terms} as were recorded by Candy in his memoranda ⁸ subsequent to November 18, 1971, and indeed, one as late as April, 1972. He wonders why Mr. Candy ~~was~~ would still be under that impression in view of the fact that the documents which he has seen ~~discloses~~ discloses that there was no commitment from the Swiss bank, that the Premier and Mr. Moog visited, and Mr. Moog has asserted that from November 18 forward, he regarded that source of a loan as dead."

Now, Mr. Moog, having regard for what your counsel has said, and I am taking him as making that statement based on information you provided to him, you regarded that source of the loan as dead following the November letter, and yet you were in communication,

Sept. 4/73
12:05-12:10 pm
plg

(Mr. Shibley)


as it turns out, with that same bank as late as August of 1972 and you were talking a put-through deal with Ames as late as July and August of 1972.

Mr. Moog: Mr. Shibley, it is all in the realm of financial negotiations and dealings. It is very, very complicated. Really, I don't know how else I can explain it ~~for~~ and I have tried to do it before.

Mr. Shibley: Mr. Moog, when you were asked to -- your counsel was asked to produce files to me on the 24th of May of this year, the file that was under debate at that time was not among them and that file, on the other hand, was produced to me on the meeting we had on July 16, close to some two months later. Do you remember the occasion?

Mr. Moog: Yes.

Mr. Shibley: And on that occasion you were asked about events of the trip to Europe



Tape H 2022 follows

September 4, 1973
12.10 - 12.15 a.m.
M.R.

(Mr. Shibley)

~~the occasion you were asked about events of the trip~~
~~to Europe~~ that ~~was~~ summer. Is that correct?

Mr. Moog: Yes.

Mr. Shibley: And you told of the shortening of the trip. Is that correct?

Mr. Moog: Yes.

Mr. Shibley: Were you asked if you had transacted any business in Switzerland on the trip?

Mr. Moog: I think I told you the whole story without any interruptions and I didn't think that that was business, really, in that sense.

Mr. Shibley: Were you asked if you had transacted any business on that trip?

Mr. Moog: I think I explained to you that I visited this bank.

Mr. Shibley: No. What was your initial answer to the question?

Mr. Finlayson: Well, just a minute.

Mr. Moog: I don't know what I said.

Mr. Finlayson: My recollection of this conversation, this is what is so unfortunate about this, Mr. Shibley, is that you had first ...

Mr. Shibley: Well, I just ^{I want to get} ~~asked~~ his answer and leave it at that.

Mr. Finlayson: What?

Mr. Shibley: I just want his evidence and then we'll leave it at that. Let me ask you this; ^{Let} let me ask it another way. Let's avoid problems. When you were asked about transacting other business, was that the occasion on which Mr. Finlayson came forward with the file? Was that the timing of the discussion?

Mr. Moog: I think he came forward with the file after I told you that we were at the Swiss bank. Did he not?

September 4, 1973
12.10 - 12.15 a.m.
M.R.

Mr. Finlayson: You asked about the business in England and that's where you are confused. You asked if the Premier transacted any business in England and our answer is, "How do we know?"

Mr. Shibley: I'll try to straighten it out because I want - you had said that you had been to England. Right?

~~Mr. Moog:~~ ^{Moog:} Yes.

Mr. Shibley: And I did ask you if you had transacted any business there?

Mr. Moog: Right.

Mr. Shibley: And you said what?

Mr. Moog: No.

Mr. Shibley: Then you said you went on from there to Stuttgart?

Mr. Moog: That's right.

Mr. Shibley: And I asked you if you had transacted any business there?

Mr. Moog: I said no.

Mr. Shibley: And then you said you went on from there on a trip through the Black Forest in Switzerland?

Mr. Moog: Right.

Mr. Shibley: Was it on the occasion of my asking about transacting business in Switzerland ^{that} ~~Mr.~~ Finlayson then produced the file?

Mr. Moog: I think the way it came about, Mr. Shibley, as I recall this, ~~that~~ ^{as} I said ~~we~~ since we didn't meet anybody in Germany that we made a phone call ~~we~~ I made a phone call to a friend of mine to set up a meeting in Zurich.

Mr. Shibley: Yes. Do you remember, Mr. Moog, when Mr. Finlayson said, "Well, wait a minute Mr. Moog, there is a file," and he produced ~~well~~, he didn't produce; he said, "there is a file," and you said, "well, let me tell the story." Do you remember that?

September 4, 1973
12.10 - 12.15 a.m.
M.R.

Mr. Moog: I kept on trying to tell you the

sequence of the whole trip.

Mr. Shibley: I remember.

Mr. Moog: Until we got down to Zurich where we

left from, at which time we had this visit.

Mr. Shibley: Mr. Moog, remember when Mr. Finlayson

said, "There is a file", and you said ~~there is a file~~ — I don't want to say —
did you say, "Well, let me tell the story,"?

Mr. Moog: I was in the process of telling you

the whole story.

Mr. Shibley: I see. In any event, you then want

on — I'm sorry, you went on, after the file was produced by

Mr. Finlayson, to tell about the visit to the bank?

Mr. Finlayson: No?

Mr. Moog: I told you about the ^{phone} call I made before

to set up the appointment.

Mr. Finlayson: He ^{had} told you about the trip

to the bank —

Mr. Moog: ^{Because that was done in the Black Forest.}
~~It was evidence in the reports~~

Mr. Finlayson: — before you saw the file.

Mr. Shibley: In any event, Mr. Moog, it was on

that occasion when you first and it was — I'm sorry, I'll
put it another way — the first occasion when you made disclosure
of the trip to that bank was when Mr. Finlayson and you met
with me on July 16th?

Mr. Moog: The first time I met you for
consultation, Mr. Shibley, or for an interview or whatever
you call it.

Mr. Shibley: Well, I could answer that but because
of the exchange of letters I have with Mr. Laidlaw I feel
under some restraint.

Mr. Moog: I could say something there.

Mr. Shibley: I'm only asking you about that file
now ~~in the~~ against the background of the evidence we've
reviewed, Mr. Moog, and I think the committee may be concerned to

September 4, 1973
12.10 - 12.15 a.m.
M.R.

(Mr. Shibley)

understand why there was hesitancy on your part.

Mr. Moog: I don't think there was any hes^{it}itancy, Mr. Shibley, was there? I certainly told you my story.

Mr. Shibley: Well, what I was going to say, in disclosing the continuation, or I'm sorry, in disclosing the further communication with that bank in August of 1972.

Mr. Moog: Why? I don't see that at all. I'm sorry, I can't follow you there.

Mr. Shibley: All right. I'd like to return to the documents in the Ames file.

Mr. Bullbrook: I'd like to ask a question, if I may.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: Mr. Moog, I take it from your evidence that there is no equivocation or misunderstand^{ing}~~ing~~ in connection with the bank that you and the Premier originally attended, that up to November of 1971, and you could help me with the specific dates, there was a possibility of dealing with that bank in connection with the Hydro financing.

~~Mr. Moog: There is always a possibility in dealing with a financial institution, Mr. Bullbrook.~~

H=2023 to follow

Sep. 4/73
12.15-12.20 pm
V.H.

~~Mr. Bullbrook:~~

~~with that bank in connection with the Hydro financing~~

Mr. Moog: There's always a possibility in dealing with a financial institution, Mr. Bullbrook.

Mr. Bullbrook: Well, we know without equivocation *that* after August 7, as far as you were concerned, there was no possibility of dealing with that bank?

Mr. Moog: Well, actually, I can only reconfirm what I've said earlier, that I got a firm and polite "no" much sooner than that from that particular bank.

Mr. Bullbrook: Yes. Prior to that.

Mr. Moog: Game over.

Mr. Bullbrook: Game over?

Mr. Moog: Right.

Mr. Bullbrook: So your evidence, basically, is that in dealing with the bank on August 7 you were purely feeling out ~~the~~ ^{the} money markets ...?

Mr. Moog: That's ~~right~~ ^{right}. A good man to ask, that gentleman. I would do it tomorrow again if I wanted to know what was going on in ~~SWIT~~ Switzerland.

Mr. Bullbrook: I am very interested in why he should rebuff you with such vigour. Why did he think that you had something to do with Hydro financing ~~through~~ ^{through} competitors?

Mr. Moog: ~~Something was on~~ Mr. Bullbrook, ~~xxx~~ I know what's on your mind.

Mr. Bullbrook: It's still ^{is} on my mind. I make no bones about that.

Mr. Moog: All right. I think he was just confused that he, the general account borrowing of Hydro and borrowing for anything else to him was all one ~~at~~ and the same thing. Then all of a sudden, I forget whatever money they borrowed, I only learned of it in this hearing. I guess he expected that his bank would be considered as a lead bank to make, shall we say, the large amount of the commission.

Mr. Bullbrook: Would it be fair to say, since we know the evidence of the Premier is that he had no discussions in connection with particular financing with that bank, that they might have come to the conclusion ~~to~~

Mr. Moog: The Premier didn't.

Mr. Bullbrook: We had the evidence.

Mr. Moog: Yes, ~~that~~ right.

Mr. Bullbrook: There are very few of us ~~are~~ ^{with} sufficient strength ~~and~~ ^{of} purpose not to accept the evidence of the Premier.

Mr. Moog: Right.

Mr. Bullbrook: I want to put this to you, if I may, ~~x~~ would it be fair that the Swiss bank, since you had attended with the Premier of Ontario and at that time discussed with at least one of the gentlemen Hydro financing, that they might have been perturbed having regard to the ~~contents~~ ^{ext} of your ~~my~~ original visit in 1971 that the Hydro financing was now being done ~~by~~ through competitors?

Mr. Moog: Whatever they had on their mind I can't ~~really~~ really speak for, Mr. Bullbrook.

Mr. Bullbrook: All right. Well, tell me then, in your conversation that Mr. Finalyson wants us to go into and I am interested in it, when they began to chastise you about the Hydro financing going through one of the competitors, did you resist that chastisement by saying "I'm not the author of that"?

Mr. Moog: I said, I am sorry, I knew nothing about this.

Mr. Bullbrook: You said you knew nothing about it?

Mr. Moog: I knew nothing about this. ^{I said} That's news to me."

Mr. Bullbrook: Did you resist it by saying in any way or conveying to them that you don't direct the financing of Hydro or the Government of Ontario?

Mr. Moog: I can't recall I said anything like that. ^{WGS} all I said ~~I~~ was terribly sorry. I would have myself ^{presumed} ~~assumed~~

if I may just say that, that Hydro would have probably dealt with the particular financial institution. I was sort of surprised that they went to the other one, simply because of size and status.

Mr. Moog: And I guess he might have objected to that, too, because they are very ^{prand} ~~fine~~ people.

Mr. Moog: That's right!

Mr. Moog: Today, Mr. Bullbrook, to be very frank, I don't think there would ^{even} be any choice because the American market is terrible. I think we all know that.

Mr. Moog: Mr. Bullbrook, I made right in the beginning two statements to Mr. Candy and ^I emphasized them. ^(and re-emphasized)

I said there is only one time that we can get that building up, ~~and~~ if you want it up, and that is now because we have got the calm before the storm. All hell will break loose pretty soon in our economy. If you want that building at any half decent price, you have got to first of all secure the money, or we have to secure the money, and secondly,

Sept. 4/73
12:20 - 12:25
M.S.

(Mr. Moog)

we've got to get on with the show to get ahead of the inflation before it kills all of us. And I hope it doesn't. Those were the two things. I ~~should have~~ ^{sort of} fore~~saw~~ ^{saw} that, if I may just put it that way. And I was very eager to get him to understand, with his architectural background, that this was absolutely vital. And he said, well, he asked me, he said, "Where are you going to get your finances?" I said, "Well, at this moment I don't know, but I've got certainly always an ace in my deck of cards and that is that I could probab^ly get it overseas." And I tried to just convince him that as long as I had an agreement with which I could borrow fast enough, that he didn't have to worry about financing. And that is all.

Mr. Bullbrook: Yes, well, that's what I want to have on the record.

Mr. Moog: You once made a much better statement. You said, I more or less gave him the commitment. That is true. I, as Canada Square, did give Candy the commitment, and I am repeating your evidence.

Mr. Bullbrook: Well, I don't want to be counsel for anybody. I want to understand this because Mr. Renwick expressed this very satisfactorily, as far as I am concerned, at the time that Mr. Finlayson felt that our counsel was being argumentative. Our problem is, Mr. Moog, that when we get down to writing a report we have to evaluate the question of evidence. And I want to try, if at all possible, that there be no direct confrontation as far as credibility is concerned. Now, there seems to be, between Mr. Candy and yourself, and do I understand it then that your explanation was that you were, in feffect, saying to Mr. Candy that as far as you're concerned and as far as Hydro is concerned, those funds are secure?

Mr. Moog: I assured him that we would be able to obtain the funds at all times. That's quite so.

Mr. Shibley: And at a low rate of interest.

Mr. Moog: And at a low rate of interest.

Mr. Shibley: And this was very important to them.

Mr. Moog: Right. Very important because he wanted a good building, and I made it clear to him that if we had to pay much more interest rates we couldn't give him that good a building. Quite right, Mr. Shibley.

Mr. Shibley: The cost of your money was important because the higher the cost of money went, the less money would be available for the building.

Mr. Moog: Absolutely correct, yes.

Mr. Shibley: So that it was significant, in the thinking of Hydro, that they expected you to get money at low interest rates.

Mr. Moog: Yes, Mr. Shibley.

Mr. Bullbrook: All right. I have one more, and this is what I consider the worst of all, from my point of view, and I want you to help me here. We went through an exercise for about three days here. At least one day that was distasteful almost to all concerned, where we talked about the question of a put-through. And I want to tell you, frankly, that ~~after~~ the directness of your evidence, I came to the conclusion, as I think perhaps our counsel did, that there was no contemplation of a put-through. And I'm astonished, sir, that you couldn't recall the fact that you'd discussed with Mr. Johnson the possibility of a put-through. I want your help in that respect.

Mr. Moog: Easy, Mr. Bullbrook. There are many, many things which go through my mind when we talk financing.

(Mr. Moog)

From that day until we had our meeting in New York, believe me, I have fought awful hard, day and night. And when we came in, we came out very, very victorious with everything intact. That's very important and I won't reveal what my thinking is. And there are many things which go through my mind, and I couldn't just explain to you what I would have discussed with somebody; what I would have thought at a particular time ~~or not~~; because my mind would be wrapped around that problem continuously. And I might speak about it aloud; I might speak about it to myself; I might write a memo; I might make a phone call. I just couldn't recall that. This is out-and-out concentration.

Mr. Bullbrook: I realize that and I recognize the refinement of your thoughts in this respect, but may I say to you, sir, that the concept of a put-through is such a generic thing that one would have thought ~~←~~

Mr. Moog: It wasn't really, as it turned out.

Mr. Bullbrook: No, but the idea of a put-through! There are really only two methods of financing this, and that is a straight financing or a put-through financing.

Mr. Moog: Actually it wasn't that good an idea ~~from~~ hindsight at all, because I can show you some of the statements which we got from ~~the~~ Prudential which would have looked pretty silly if we ever would have approached them with that idea. Like, they made a couple of ~~hundred~~ billion dollars in increase in assets in one year. Like, 2.7 or 8 billion increase between 1971 and 1972 in ~~assets~~ ^{assets}. Just imagine if we would have come to them and said, "How would you like to take 20 million lousy Swiss converted francs in dollars?" They would have just laughed at us! It really wasn't quite that ingenious.

Mr. Bullbrook: But we can understand the evidence to be now, again, that at least for a period of some six weeks a put-through was a considered avenue.

Mr. Moog: One of many thoughts. That's all I can tell you.

~~Mr. Bullbrook: Well, many realizes and I don't want to be argumentative.....~~

Tape H 2025 follows

H - 2025 - 1

Mr. Moog

~~many thoughts, and of many thoughts, that's all I can tell you.~~

Mr. Bullbrook: Yes, but ~~many realizations~~ and I don't want to be argumentative, the "many" refers to the institutions involved. Help me if you can. I understand this to be only two methods of financing. Either you do a straight financial deal and the vehicle you use by way of mortgage or debenture or lease assignments, or any other sophisticated method, is aside from it. You either do it by a put-through or you did it by straight financing, sir.

Mr. Moog: I don't think anybody has ever done a put-through, at least to my knowledge. I am sorry, but I certainly don't know of one.

Mr. Bullbrook: No, but to help me, aren't there really only the two alternatives available to you? You either arrange your financing as straight financing or you arrange it through a put-through?

Mr. Moog: Oh no, no, we could go through public underwriting, we could—there are many avenues open.

Mr. Bullbrook: That is straight financing.

Mr. Moog: Well I don't know what you call it really.

Mr. Bullbrook: All right, fine.

Mr. Shibley: Mr. Moog, do I take it that at no time did you discuss a put-through with the Prudential?

Mr. Moog: No sir.

Mr. Shibley: At no time did you discuss a put-through with Ames which related to the Prudential financing?

Mr. Moog: Not to my recollection. I wouldn't think so at all, no.

Mr. Shibley: Well just - I only have one more thing to deal with in order to close off this topic. I would like to produce to you a document out of your own file of hand-written notes, and I don't want to extend this unduly but it is on the

H - 2025 - 2

(Mr. Shibley)

^{topic}
~~topic~~ Mr. Bullbrook ^{has} ~~is~~ open, and ^{ed} ~~I~~ say it is the last time I want to refer to the subject, but this is in your handwriting is it?

Mr. Moog: Yes.

Mr. Shibley: Yes. And you will notice at the bottom of the page, toward the bottom of the page, "Lynn ~~the~~ Goth, Ferber and Ray Charles." Now Ferber and Ray Charles are personnel within Prudential are they not?

Mr. Moog: I met Mr. Ferber for the first time the other day. Did I meet Mr. Charles?

Mr. Coles: No.

Mr. Shibley: But they are with the Prudential?

Mr. Moog: I understand so, Yes.

Mr. Shibley: I don't know whether Lynn Goth - is he also with the Prudential?

Mr. Moog: I wouldn't recall. Is he? Oh, he is Ames, I am sorry.

Mr. Shibley: All right. Now what is causing me some anxiety is that on a document wherein references are made, or a reference is made to two people who are executives of Prudential, the document starts, ~~six~~ six and an eighth, ~~arrow~~ arrow, eight and an eighth, and then \$30,000, ~~arrow~~ arrow down to \$20,000 ~~would you like~~ would you like to explain that document to this committee?

Mr. Moog: I would very much like to if I can get my memory refreshed on it.

Mr. Chairman: Do you want this entered as an exhibit?

Mr. Shibley: Yes, please, Mr. Chairman.

Mr. Chairman: It is entered as exhibit 224.

Mr. Shibley: You see what is bothering me, M r. Moog, I will be very frank about it, is that the document seems to contain entries that again smack of a wrap-around put-through, etc., and the same document is notⁱng the names of Prudential people whom you yourself say you never discussed wrap-around or put-through

H - 2025 - 3

(Mr. Shibley)

with.

Mr. Moog: Well, I find a little note which says "Omega yacht racing" on here and the only person in the financial community I ever discussed racing with would be Glen Holloway, and I am just trying to relate right now, I am still trying to figure out whether I can help you further or not.

Mr. Shibley: You might understand now why I am sometimes driven to extremes, Mr. Moog, in terms of trying to understand this sort of thing. Here is a document that references people in the Prudential with whom you have got your permanent financing, and on the self-same document - would you agree with me that the upper portion of it is still talking about the split of \$30,000 and \$20,000 that was found in the Ames memoranda that we have just been dealing with?

Mr. Moog: No, I don't really think so, Mr. Shibley.

Mr. Shibley: Well what is that all about? What is the six and an eighth to eight and an eighth?

Mr. Moog: Well six and an eighth and eight and an eighth is a two per cent spread of some sort. I don't know what that word on the upper left says. Maybe that will explain something. There is \$1.5 million and that equates to \$30,000. Why, I don't know at the moment. It seems like two per cent or something like that.

Mr. Shibley: Well you see, Mr. Moog, when you first discussed this with ^{Ames} ~~us~~ way back in '71, there was talk of using ~~at~~

Tape H - 2026 follows

September 4/73
12.30-12.35 pm
V.H.

~~Mr. Shibley: Mr. Moog: When you first introduced
this into the way in 1971, I found, there was talk of making
20 million Swiss and 30,000 Canadian.~~

Mr. Moog: I usually don't make mistakes like that.
When I talk millions I usually abbreviate ~~million~~ M-I-L.
This looks like \$30,000, which then is reduced to \$20,000.

Mr. Shibley: ^{Accountants often} ~~count this off~~ and talk in terms of
thousands, *leaving off the last three zeros.*

Mr. Moog: I don't, ^{MR. Shibley.} ~~remember~~ on the other there,
there is one point five. I don't put 15,000 in there I put
1.5 mil^{ions} which is millions.

Mr. Shibley: You notice also the dating on that,
23-27 November - no year's given - but what bothers me is that
the names of the personnel within Prudential ^{found} ~~are~~ on the self-
same document as these figures etc and I would just like you to
clear it up if you can.

Mr. Finlayson: There seems to be a lot of unrelated
things. What's Sperry-Rand, St. Catharines, got to do with it?

Mr. Moog: Sperry-Rand is, I think they make a device
for an ~~air~~ ^{air} navigation device for yachts.

Mr. Finlayson: That's tied in with the yacht racing
and the World Bank?

Mr. Moog: That's what I am just noticing.

Mr. Shibley: You were going to sail right through
the World Bank?

Mr. Moog: Hopefully. Marconi makes another one of
those devices too, by the looks of it, which weighs 22 pounds
by the way.

Mr. Shibley: *Well I know* ~~that~~

Mr. Moog: Mr. Shibley, I don't want to be funny but
I really can't help you on this. On the top it would not
say millions, I am certain that would be thousands of dollars
because I put a dot and dash behind and that would be my way
of identifying 30,000 rather than 30 million where I would put
30 and M-I-L behind it. At least, that is my habit.

Sep. 4/73
XI
12.30-12.35 pm
V.H.

Mr. Shibley: I notice you have periods at the end of the three zero and a dash as though it might have been 30 million.

Mr. Moog: Well, I don't think so.

Mr. Shibley: I am concerned, Mr. Moog, to put this to rest, once and for all, that on a document wherein the names of the Prudential officers are noted, there is this kind of information.

Mr. Moog: Well, yes, quite a bit of information on that sheet, quite unrelated. There is a Mutual in New York referred to, Dominion Mortgage and Realty, I don't know why I would refer to those people.

Mr. Shibley: All right. We are not going to pursue it further with you.

Mr. Moog: I am sorry, I would like to ~~be~~ help you.

Mr. Shibley: Coming back to the file, if we can, of the Ames material, on that August 4 document where it says "Hydro is doing financing"- are you back there with me? August 4.

Mr. Moog: About the middle?

Mr. Shibley: Closer to the front. August 4. Just as part of that document wherein it says "Hydro's doing financing" and so on, "They would only do one every three years, therefore, no money for Moog, ~~we~~ ^{we} will leave ~~an absence~~ ^{in absence} for time being, "Now have you any idea what's intended by that wording?

Mr. Moog: Well I think I might have explained ~~it~~ ^{at} ~~one~~ one time or another to Mr. Bradshaw ~~that~~ ^{that} I certainly wasn't going to go any conventional Swiss route if ~~Hydro~~ ^{Hydro} I ever was to go a Swiss route and maybe that is what he means. Again I don't even know who wrote this.

Mr. Shibley: No. This is Mr. Johnson's memoranda.

Mr. Moog: I see.

Mr. Shibley: And it just simply says "after mentioned"

Sep 4/73
12.30-12.35 pm
V.H.

(Mr. Shibley)

you can't get the money because Hydro's doing financing ~~and~~
therefore no money for Moog, ^{we} will leave ^{in abeyance} ~~an advance~~ for time
being." ~~Do~~ Do you have any understanding of what's intended
there?

Mr. Moog: I wouldn't. No.

Mr. Shibley: All right. ~~Can you tell me~~ I
want to go on to the next document and this is a document
that Mr. Johnson ~~said~~ said he prepared during the week ending
September 22. There is only one thing on it that's of interest
to me, Mr. Moog, and again the figure of \$50 million eight per
cent U.S. appears.

Mr. Moog: Yes?

~~Mr. Shibley: Was it your expectation that the~~
~~were going to be permitted to borrow~~

H-2027 follows

September 4, 1973
12.35 - 21.40 p.m.
M.R.

(Mr. Shibley)

~~Mr. Moog: Yes.~~

Mr. Shibley: Was it your expectation then that you were going to be permitted to borrow anything up to \$50 million?

Mr. Moog: We had no idea in the very beginning what we were talking about and, again, until you condense it down to facts, we certainly thought we would be running as high as \$50 million at one time. And if we were to run as high as \$50, then we would have liked to borrow \$50, yes.

Mr. Shibley: I beg your pardon? I'm sorry, I didn't catch the last part of your answer.

Mr. Moog: I'll try to explain that. Before you narrow ~~me~~ down what you are really dealing with and know exactly what you are obligated to, on costs and so on, we, at one time, thought we might easily run as high as \$50 million and if we were to run as high as that ~~by~~

Mr. Shibley: Well, that's the point, I think, which is a new point for this committee. Namely, that when you made your submission, you indicated in your submission that the rental would be \$4.92 to \$5.25, I believe, depending on the cost of your financing. Is that correct?

Mr. Moog: I believe that's what we said, yes.

Mr. Shibley: Yes. And when you were talking ~~\$50~~ \$50 million throughout the documents here and elsewhere, you really meant \$50 million should your cost of money be more. Is that so?

Mr. Moog: Well, it's perhaps more than that, Mr. Shibley. Again, you have to look at it in the entire context. I think one of the main reasons, too, we like to have \$50 million is the financial institution would then turn around and say "well, we'd like to give you only \$40 million," then maybe we could settle at \$45 million.

September 4, 1973
12.35 - 12.40 p.m.
M.R.

(Mr. Moog)

I think that is another aspect in dealing with it.

Mr. Shibley: All right. It may be another aspect, Mr. Moog, but isn't it a fact that even as late as October, 1972, when the final documentation was being prepared, there was no agreement ~~as~~ yet as between you and Hydro as to the maximum amount that you could borrow for this project?

Mr. Moog: Nor did we really know ⁸what we all had to put in to the building at that time.

Mr. Shibley: Is your answer then "yes" to what I've ~~say~~

Mr. Moog: If we would have been able to get \$50 million and the building would have been as expensive as that, sure we would have liked to borrow \$50, yes.

Mr. Shibley: Yes. So that the multiplication of \$4.92 times - I'm sorry, \$34 times the gross area of the building, coming up with a \$44 million figure, was not really settled upon until well into October, 1972?

Isn't that so?

Mr. Moog: I think the limit wasn't put on until then, that's true.

Mr. Shibley: That's right.

Mr. Moog: Yes, that's right.

Mr. Shibley: And in fact, you felt quite free to seek out funding for as much \$50 million?

Mr. Moog: We can always ~~say~~

Mr. Shibley: Against the security of this building?

Mr. Moog: Well, I've asked for it as an ~~open~~ ^{open,}

yes/

Mr. Shibley: Mr. Moog, ~~say~~

Mr. Moog: No, I did, ^{Mr. Shibley} ~~Mr. Shibley~~ ^{involving} that's what I did.

Mr. Shibley: I want to put it very directly to you that because of the form your submission took, that you considered yourself free to borrow as much as \$50 million on the security of this building, depending upon the cost of your money.

September 4, 1973
12.35 - 12.40 p.m.
M.R.

(Mr. Shibley)

Is that so?

Mr. Moog: Well, I can't recall really what my thinking was at the time. All I can tell you now is what I would reconstruct it at and I think that is what I have said. I can't ←

Mr. Shibley: Well, do you agree with me as to that?

Mr. Moog: Well, I think the way I put it, Mr. Shibley, was that if the building was to cost us \$50 million, we would have liked to borrow \$50 million. Also, if we go in with a request to ^a financial institution for \$50 million, at least we've got some way to go down. If you start at the ~~xx~~ lower one, you've only got one way to go and that's down below that one again. It's a matter of negotiations, more than anything I would ~~think~~ ^{think}

Mr. Shibley: Let us say that you had ~~had~~ had to pay eight and a quarter per cent interest for your money — was it your understanding and the understanding of Hydro that you could have borrowed more than \$45 million?

Mr. Moog: I don't think ^{so}

Mr. Genest: Excuse me, Mr. Shibley, I object to the witness being asked as to the understanding of Hydro.

Mr. Shibley: All right. Was it your understanding that you could borrow, based on your proposal, more than \$45 million?

Mr. Moog: Mr. Shibley, I don't think I had an understanding. All I did is I looked at the documents and I tried to figure out which way to negotiate with them and then bolted it down to the deal in the end.

Mr. Shibley: Well, there will be other evidence on this, Mr. Moog. I just wanted to get your testimony for the moment.

Mr. Moog: Yes.

Mr. Shibley: And may I then ask you ~~then~~ to skip the typed document to the next one dated September 29, 1972... ↘

Sept. 4/73
12:40-12:45 pm
PLG

(Mr. Shibley)

~~typed document to the next one dated September 29, 1972.~~

You will notice that again, there ^{are} ~~is~~ enumerated items:

"Guaranteed by province-8 per cent. 15 non-call.

1/2 per cent commitment fee annually. Take down

as soon as possible. Put up when closed, ^{letter of credit} ~~earlier~~ financing, ^{by bank.}

And then there is a note:

"Short-term notes with Hydro."

And then:

"6. Will take all prefer. Will let Mutual Benefit take 10 million but no further. No withholding tax hang-up. No point in seeing developer."

Now, can you shed any light, Mr. Moog, as to any of the items on this exhibit?

Mr. Moog: I always made it absolutely clear to Mr. Johnson of A. E. Ames that if we ever talked anything above 8 per cent I would simply not be interested. That is what I aimed at as the interest rate.

Mr. Shibley: Right. And I think in that respect you were emphasizing, were you not, that the guarantee by the province should require them to relate to the provincial rate.

Mr. Moog: No, Mr. Shibley. I didn't really say that.

Mr. Shibley: I see.

Mr. Moog: I don't ~~to~~ know at all. I don't recall that we discussed ^{any depth} the guarantee. I might have said, "Well, we will try for it ^{??} or something of that sort. I can't recall what happened on that.

Mr. Shibley: Well, just before we leave that -- we will come to it in order, but you remember the telexes that passed?

Mr. Moog: Yes.

Mr. Shibley: And I just wondered whether the position you were taking, and I am not suggesting any impropriety in this respect, but the position you were taking in order to get your 8 per cent rate is that they should relate rate to the provincial rate and in fact ^{disputed} you got a guarantee of the

Sept. 4/73
12:40-12:45 pm
PLG

(Mr. Shibley).

province for this loan, or expected one, that the rate should be as low as 8 per cent.

Mr. Moog: Well, I certainly stressed the point of having excellent covenant. I don't know to what extent ^{I really} discussed with them the possibility of a guarantee.

Mr. Shibley: All right. Do you want to comment on any of the other items on this?

Mr. Moog: A 15-year non-call. That seems to be a normal request that you can't call the loan prior to 15-year ^{maturity}

Mr. Shibley: I understand that. ~~and~~

Mr. Moog: Half a per cent commitment...

Mr. Shibley: Would you skip down to the item, "Short-term notes with Hydro". That is the item that I am concerned about.

Mr. Moog: That is what I am afraid -- I can't help you. I noticed it when you read it.

Mr. Shibley: Then I want to pass along now and I will only alert the -- ~~there~~ there is a draft of the Commission agreement dated October 3. It is a typed page. You can skip two or three pages and it is this document here, "October 3, 1972" and I noticed that in this document, Mr. Moog, reference is made ~~to~~ in paragraph 8 on page 2; ~~it~~

"In consideration of our services in arranging this financing you agree to ~~pay~~ pay us a commission of 0.4 per cent of the principal amount of such financing..."

And that would equate with \$180,000 dollars, ⁶⁶payable one-half upon the delivery of commitments from institutional investors for such ^{cost} finding, ~~the remaining~~ remaining one-half upon delivery of the funds as arranged."

So that would be normal terms, leaving the amount aside for a Commission agreement. Is that correct?

Mr. Moog: ~~To~~ To pay it as stipulated. When stipulated

Mr. Shibley: Yes.

Sept. 4/73
12:40-12:45 pm
PLG

I would think so, yes.
Mr. Moog: I can't really speak for that. Mr.

Johnson probably can.

Mr. Shibley: And then the next document is the letter that was actually sent and again at the bottom of the first paragraph, the last line:

"We understand that the financing, the loan required for this project will be approximately \$50 million."

Mr. Moog: I am sorry, I don't have that.

Mr. Shibley: I am sorry. *It is dated* ~~dated~~ 5/10/72 on the upper... You see that?

Mr. Moog: Yes. That is quite possible. We discussed \$50 million with A. E. Ames. Yes.

Mr. Shibley: And then on the bottom of the page, part of paragraph 2:

"Such lease to be guaranteed by the province of Ontario."
So that as late as October 5, that was part of the proposal."

~~Mr. Moog: This and Ames' are under standing.~~

Tape H 2028-3x 2029 follows

Sep. 4/73
12.45 to 12.50 pm
fvk~~(Shibley)~~~~that was part of the proposal.~~

Mr. Moog: That was Ames' understanding and not necessarily what ~~was~~ ^{was} at this time, ~~thought~~ ^{thought or knew}.

Mr. Garrow: Excuse me, Mr. Shibley, just to clear up a possible misunderstanding, I think you mentioned to Mr. Moog a moment ago that the document you are now looking at, entitled "Draft 5/10/72" was sent to Mr. Moog and I think you might want to clear that up.

Mr. Shibley: Oh, I'm sorry. Thank you very much, Mr. Garrow. You never received ~~that~~ ^{that} letter ~~agreement~~ ^{agreement}, did you, Mr. Moog?

Mr. Moog: I really can't tell you. I don't think I had.

Mr. Shibley: Did you discuss it with the Ames representatives? There was a meeting ~~between~~ ^{apparently} you in November, on November 11, 1972, is my recollection, where →

Mr. Moog: Mr. Bellamy came up?

Mr. Shibley: → Mr. Bradshaw said he was there and he left because he didn't want to be there while you ~~started~~ ^{read it} about a

Mr. Moog: When the heat was on?

Mr. Shibley: Yes.

Mr. Moog: Right.

Mr. Shibley: Was this letter agreement discussed?

Mr. Moog: I can't recall. I don't really think so but maybe Mr. Johnson can enlighten you on that.

Mr. Shibley: All right, because it has to be compared with what ultimately turned out to be an arrangement by letter between you which is already an exhibit.

Mr. Moog: I can't recall it.

Mr. Shibley: All right. Then, the next document, we're now talking again - Fred Ferber is with the Prudential. At the ~~bottom~~ ^{bottom} it says: "\$50 million at \$1.01, or "1.01." Have you any explanation of that?

Mr. Shibley: All right. On the next page there's references to the lawyers that ~~was~~ were suggested ~~by~~^{be} retain^{ed}. This would be as at October 4, so now can I take it that as of ~~October~~^{October} 4, 1972 you were moving well towards reaching agreement with the Prudential?

Mr. Shibley: You see, on the second page there of the October 4th memorandum, they're ~~xxx~~ referencing the names of lawyers who might be used. They're all at Blakes, Mr. Garrow will be pleased to note; Mr. Ron Brown, Mr. Lockwood, Mr. Evans, I understand Mr. J.T. Evans.

Mr. Moog: I would think that this is what they must have assumed looking at this. Again I'm just guessing.

Mr. Moog: I can't recall but certainly wouldn't discourage anybody coming close to ^{a big source} ~~the main picture~~ of money ~~in~~ their efforts.

Mr. Moog: I think I said ~~at~~ earlier, I really never expected to get a guarantee. It was something we ~~had~~ tried on for size and certainly got shot down in a hurry.

Sep. 4/73
12.45 to 12.50 pm
fvk

Mr. Shibley: Did Ames, and for that matter, did the Prudential, react in any way to the fact that there was not to be a provincial guarantee?

Mr. Moog: That I couldn't tell you. Mr. Johnson would be more qualified because I really ~~did~~ didn't meet those gentlemen until this Friday.

Mr. Shibley: Did they not discuss the consequences of the ~~g~~ no-guarantee situation?

Mr. Moog: I think they would have discussed it at one time.

Mr. Shibley: What was said about this circumstance of no provincial guarantee?

Mr. Moog: I think all I would have said and I will say right now, if I was to get money ^{was} ~~it~~ it shouldn't make any difference.

Mr. Shibley: By October 30, of course, you're down to the point of completing the documentation as between Canada Square and Hydro.

Mr. Moog: That's right. We certainly knew that there wasn't any hope but, at the same time, we wanted to play very carefully on all that. You see, Mr. Shibley, perhaps I can explain it this way. We wanted to convince, first of all, the lender that they are to loan us money and that the deal was signed and the ~~xxx~~ covenant was good, and then we wanted to sort of get them off this ~~a~~ idea ~~of~~ of theirs ~~more~~ more than ours ^{which was} ~~because~~ ~~it~~ to have this guarantee. It's a point of negotiating.

Mr. Shibley: ~~But did this not open up the question of the.....~~

(Tape H-2030 follows)

Sept. 4/73
12:50 - 12:55 pm
M.S.

~~(Mr. Moog)~~

~~Of course they have the guarantee. It's a point of~~
~~guaranteeing.~~

Mr. Shibley: Yes, but did this not open up the question of the credit of Hydro, independently of a provincial guarantee?

Mr. Moog: Well, we maintained, always have, that Hydro has very good credit, ~~that~~ there shouldn't really be that much emphasis put on this guarantee business, which, of course, ^{we} would then probably feel a bit differently about it. It was not reflected in our rate, if that is perhaps your question, Mr. Shibley.

Mr. Shibley: Well, let's go back to that. You were stressing the guarantee -- the covenant, I'm sorry.

Mr. Moog: Covenant, yes.

Mr. Shibley: You were stressing the covenant in terms of getting a lower rate. Did they not reflect on the rate when the covenant was less than one which included a provincial guarantee?

Mr. Moog: No, not to my knowledge. Again, Mr. Johnson might clear it up better than I.

Mr. Shibley: And then, did they not also concern themselves with the right to sue? You'll notice the very next page, Steadman says ---


Mr. Moog: I only read on the periphery of that, and I really don't want to get into that, because I haven't had any dealings directly with that.

Mr. Shibley: Did you have any dealings with ~~any~~ anyone, referable to this limitation on the right to sue? Namely, the need to get the consent?

Mr. Moog: No.

Mr. Shibley: You never discussed that?

Mr. Moog: Personally I do not recall, no.



Sept. 4/73
12:50 - 12:55
M.S.

I might have had a discussion with maybe Mr. Bradshaw on it, that's possible. But I don't recall anything specific.

Mr. Shibley: All right. To go on, then.

Then on October ---

Mr. Bullbrook: On the words, ^W no political action to change, ^H does that mean that they infer that the present government might not last another 30 years? Could that be it.

Mr. Wm. Hodgson: It's possible, not probable!

Mr. Deans: Nor desirable!

Mr. Shibley: I'll go on with the next document. October 31, '72, Mr. Moog. I notice from this that you now appear to be looking for alternatives again.

Mr. Moog: I think I always have, and the way to get good financing is to never ~~say~~ say that you can't get anything else, and you ought to know that by now, Mr. Shibley.

Mr. Shibley: Mr. Moog, I put it to you that the difficulties arising out of the cancellation of any idea of a provincial guarantee caused problems.

Mr. Moog: No, had nothing to do with that. I am sorry, Mr. Shibley. It really did not.

Mr. Shibley: Okay.

Mr. Moog: You see, what it says in there is another consortium ^{RT} I have been dealing with, the Midwest consortium, which I was made aware of by Equitable, just as I was made aware of Equitable ^{at} the present source. These people usually know.

Mr. Shibley: May I go on then to a November 3 document? See the handwritten document, Fred Ferber, November 3. Skip two or three pages. And you'll notice they're still concerned about ^{the} lease and ^A they talk about different things. The right to sue is one of the mentions. Can Hydro go bankrupt.

Mr. Moog: Should be a question mark in there.

Mr. Shibley: Then on the bottom there is 7.5 per cent Western. What does that mean?

Mr. Moog: I am going to ask Mr. Johnson, Maybe we could have gotten half a per cent off. I don't know.

Mr. Shibley: And Western. What does Western mean to you?

Mr. Moog: I really don't know.

Mr. Shibley: You have nothing to contribute on that?

Mr. Moog: I have nothing to contribute about that, no.

Mr. Shibley: Then there's the commitment letter and that's dated November 8. And I just ask the committee to note the second paragraph. "Subject to completion of satisfactory documentation and approval of their investment committee, Prudential have agreed to provide financing for this project on the following terms and conditions."

So, now you've got what amounts to commitment subject only to documentation and approval of the investment committee. Is that correct?

Mr. Moog: We didn't consider it quite that firm at that time, but we felt well enough to have it that far.

Mr. Shibley: Well, let me ask you this, Mr. Moog, having received this much of a commitment from the Prudential, by letter from Ames of November 8, '72, did you thereafter pursue financing with any other lending institution?

Mr. Moog: I do not recall. I would always keep my ears and eyes open, but I don't think I did anything actively.

Sept. 4/73
12:50 - 12:
M.S.

Mr. Shibley: Well, did anyone on your behalf pursue the matter of financing?

Mr. Moog: No, I would not think so.

Mr. Shibley: So that, so far as you were concerned, this was it?

Mr. Moog: Well, once you get this far then you'd better leave well enough alone and be very, very careful with it that the raw egg doesn't dissolve.

Mr. Shibley: And can we take it then from November 8, '72, forward, you were dealing with the Prudential and no one else?

Mr. Moog: That would be correct.

Mr. Shibley: All right. Thank you. ~~Thank you.~~

~~went to the office to the President's office and I still saying about the night to me~~

Tape H 2031 follows

(Mr. Shibley)

Then I want to go on, skipping the November 8 document. They are still worrying about the right to sue without consent. And then there is the document of November 10 with the computation of the Commission. And then there is a letter attached to the Globe article of November 14. That is the letter of November 16 and I think committee members should note that in the second paragraph it says:

"I am enclosing a clipping from The Toronto Globe and Mail, November 14, which sets out that the Ontario Government have accepted the proposal that Ontario Hydro become a Crown Corporation. This should help take the status of Ontario Hydro out of limbo."

Now the reference there is to the fact that ~~the~~ Task Force Hydro reported on November 13 that Hydro should be a Crown Corporation and the government was indicating publicly its approval of that part of the report. Again Mr. Moog, do I take it that so far as you are concerned, you had no discussions about this aspect of the matter with anyone within government?

Mr. Moog: That is correct, Mr. Shibley. Absolutely correct.

Mr. Shibley: And the fact that the report came down at a time when there was a question in the mind of the Prudential as to the status of Hydro and the fact that the report came down at a time when it resolved that question in a way that this letter indicated was ~~an~~ coincidence.

Mr. Moog: I would certainly say so.

Mr. Shibley: But you have no information...

Mr. Moog: I have no information whatsoever on this matter. I understand that it hasn't been quite resolved even at this point, but I may be in error.

Mr. Shibley: My only point being, it ~~wasn't~~ appears from this file that there was a question through this period of time, in the minds of the Prudential. They were worrying themselves about the status of Ontario Hydro and the right to sue without consent and that question ~~is~~ was resolved

(Mr. Shibley)

by the publication of the Task Force Hydro report.

Mr. Moog: I really can't help you any further on that.

Mr. Shibley: All right. You know nothing about it.

Mr. Moog: No.

Mr. Shibley: Do you have any information from Mr.

Candy or anyone in government that the timing of that publication of the report was in any way related to this?

Mr. Moog: No Sir, none whatsoever.

Mr. Shibley: All right. Then we get the letter of November 17, which of course we have already discussed, and you say it was a negotiated figure of 100,000.

Mr. Moog: That is correct.

Mr. Shibley: So that when you said negotiated, this would be a reduction from \$180,000 to \$100,000.

Mr. Moog: Oh, from a lot more than \$180,000.

Mr. Shibley: All right. Then come the telexes, and this is where they are talking on December 4. Now this is the period of time after the guarantee has been withdrawn.

Mr. Finlayson: Withdrawn?

Mr. Shibley: I am sorry. The guarantee has been cancelled. Any idea of a guarantee has been cancelled, and ~~after that~~ the finance committee of Prudential are still free to not approve the loan, is that right?

Mr. Moog: I think it could have easily been, yes.

Mr. Shibley: I am just interested to note that this comes from the Ames' file referable to the Hydro financing. I am just wondering whether again they ^{were} ~~are~~ relating the interest rate to the rate of the Ontario issue.

Mr. Moog: I don't know.

Mr. Shibley: You don't ~~know~~ know. Then the next thing is December 21. This is again for the assistance of the committee. You will notice:

"This is to confirm our recent telephone conversation in which I reported to you that on December 12, the finance committee

Sept. 4/73
12:55-1:00 pm
PLG

(Mr. Shibley)

of ~~the~~ Prudential approved the purchase, etc."

so that the approval of the finance committee was given on December 12, 1972, and you were notified of it by letter of December 21, although you had also received telephone communication -- or they had. Is that correct?

Mr. Moog: Yes.

Mr. Shibley: And the next two documents relate to a letter. If you will stick with me on this, I'd like to finish this file before we break for lunch, if you agree,

Mr. Moog. ~~It talks about in~~ ^D paragraph one of this letter ~~that~~
~~there is the~~

Tape H 2032 follows

Sep. 4/73
1.00 to 1.05 pm
fvk

(Mr. Shibley)

~~talks about, in paragraph one of this letter, that~~
~~there's the~~
~~heads to~~ reference: "The corporation's only business will be to construct, own and operate the building described hereinafter."
~~That's~~ That's part of paragraph one. That's information you provided to Ames and they, in turn, provided to the Prudential.

Mr. Moog: I would presume so, yes.

Mr. Shibley: Then, the only other thing that interests me in this letter is what is on page two of the final form of it, ~~and~~ It's to be compared with what's on page two of the original typed draft, wherein it says: "The corporation wishes to arrange to borrow from you an amount of U.S. dollars." ~~XXXXXX~~

In the first draft is said: ~~the~~ "Equivalent to Canadian \$45 million." In the final wording it ~~says~~ says: "\$45 million US dollars," not equivalent. So, your application with the Prudential is for \$45 million US dollars, not the equivalent of \$45 million Canadian dollars.

Mr. Moog: Yes, I'm advised that that is correct.

Mr. Shibley: And that was very specifically changed. Now, finally, there's a document dated May 14, 1973, the very last document. I want you to go right to the bottom with me and it says: "Real Action: (1) Savings ^{below} ~~before~~ 8 per cent to ~~the~~ Hydro; (2) Signed and Sealed; (3) Pension Fund - get into act."

Did you have any discussion with - this is Mr. Bellamy's note - to the effect that pension funds of Hydro might be employed for this building?

Mr. Moog: I do not recall that at all, Mr. Shibley.

Mr. Shibley: Was there any, or is there any arrangement respecting ~~the~~ pension funds of Hydro?

Mr. Moog: We have nothing to do with pension funds and we haven't dealt in it.

Mr. Shibley: So you can't help explain what's in this entry?

Mr. Moog: I'm afraid not.

Sep. 4/73
1.00 to 1.05 pm
fvk

Mr. Shibley: Just one further question before we break, Mr. Moog. To be clear now, your evidence is that the fact that there was to be no provincial guarantee did not cause any problems respecting your arrangements with the Prudential. Is that correct?

Mr. Moog: To the best of my knowledge, none.

Mr. Shibley: And it did not present any problems generally in terms of financing for this building. Is that correct?

Mr. Moog: Well, that's a big question. How do you mean generally?

Mr. Shibley: Your financing as of October 4 and following was to be with the Prudential and you said it caused no problems in that connection. Did the fact that there was to be no provincial guarantee cause any problems at all?

Mr. Moog: Not to my knowledge it hasn't.

Mr. Shibley: Mr. Chairman, I think we might break now.

Mr. Chairman: ~~Yes~~ You have some further questions?

Mr. Shibley: Yes, a limited number, Mr. Chairman, and I think I can clean them up in the early part of the afternoon.

Mr. Chairman: Some of the members, I guess, may ~~have~~ have some questions, too.

Mr. Bullbrook: W Could I ask one question in connection with this?

Mr. Chairman: Yes, Mr. Bullbrook.

Mr. Bullbrook: Do I take ~~it~~ ^{Italy} ~~the~~ Swiss-Granada is really the same corporation, with ~~the~~ change of name, as Yonge-Eglinton?

Mr. Moog: No, there is a slight difference in that, Mr. Bullbrook.

Mr. Chairman: Am I ~~rush~~ rushing if I ~~ask~~ ask you to be back by 2:15?

The committee adjourned at 1:05 ~~o'clock~~ ^{o'clock} p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice

A.E. Ames and Co. Ltd. counsel:

J.W. Garrow
J.W. Mik

Senior underwriter, A.E. Ames and Co. Ltd.:

W.A. Johnson

President, Canada Square Corp. Ltd.:

Gerhard W. Moog

List of exhibits introduced during this sitting appears on the next page.

INDEX TO EXHIBITS

Exhibit	Page	Description
223	2001 - 2	File of A. E. Ames and Company Limited re Canada Square Corporation Limited.
224	2025 - 2	Handwritten notes from file of G. W. Moog, Canada Square Corporation Limited.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, September 4, 1973

Afternoon session

2033-2074

H-2033-1

The committee resumed at 2:20 o'clock, p.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. Mr. Moog, if you would come forward.

Mr. Moog: Right away.

Mr. Shibley: Mr. Moog, I have relatively ~~present~~

Mr. Finlayson: Mr. Chairman, before Mr. Shibley resumes his examination of the witness, Mr. Coles had a telephone conversation with Mr. Bradshaw as to this question of whether the phone call was on August 4th or August 7th and Mr. Bradshaw says that his docket entry is in error, that he has an entry in his day book indicating that the phone call took place on the 4th. Now, the 4th is a Friday, ^{not} and having spoken to him myself I would assume that he made the phone call on the Friday and then docketed the conference and the phone call ~~on~~ on the following Monday. So I think that apparently explains the discrepancy between the two memos, the one of Mr. Bradshaw and the other of Mr. Johnson.

Mr. Chairman: Thank you, Mr. Finlayson.

Mr. Shibley: Thank you, Mr. Finlayson, that does help to clear that up.

These are somewhat disjointed questions, Mr. Moog, and you will forgive me in that respect. You know that there is a letter agreement which provides that any savings respecting financing as a result of the rate being less than eight per cent ^{be} ~~be~~ shared with Hydro. *should*

Mr. Moog: That's right.

Mr. Shibley: Now, that agreement was effective under date of October 18, 1972.

Mr. ~~Moog~~ Moog: Yes, it forms one of the ~~8~~ appendices, I believe.

Mr. Shibley: In effect, ~~though~~ though, as I understand it, from Mr. Bradshaw's testimony, the rate was ~~as~~ established at eight per cent on October 4th, 1972.

Mr. ~~Moog~~ Moog: Mr. Shibley, once again, I don't consider anything as established and final until I have the document in my hand. We negotiated that; I did ask Mr. Johnson, I believe, to go below the eight per cent if that was possible, and ~~four~~

Mr. Shibley: Well, I am just quoting Mr. Bradshaw's evidence.

Mr. Moog: YEs, I know, I know, you are correct.

Mr. Shibley: And the concern I have is whether the agreement to share savings was meaningful or not, in that if the rate was established on October 4 -- can I take it that what Mr. Bradshaw was adverting to was the meeting with the ~~the~~ Prudential in New York on October 4th?

Mr. Moog: I would certainly think so, yes.

Mr. Shibley: So, that was the rate that was discussed with the Prudential on October 4, is that correct?

Mr. Moog: I believe they were asked to go somewhat below that, but I think eight per cent was definitely agreed on.

Mr. Shibley: I realized you may have asked them to, but.

Mr. Moog: Yes.

Mr. Shibley: He, having given testimony that the rate was established at eight per cent at the meeting with Prudential on October 4, the agreement of October 18, respecting a sharing of savings, really was quite meaningless.

Mr. Moog: In that particular connection, Mr. Shibley, but suppose ^{the deal with} the Prudential could not have been developed, then, I think it would have been very meaningful.

Mr. Shibley: Now, then, Mr. Moog, I have asked, and I ask you again, to have a chronology compiled as to the dates of execution and delivery of the documents inter se Hydro and Canada Square.

(Tape H-2034 follows)

H-2034-1

(Mr. Shibley)

~~and delivery of the documents inter se Hydro and Canada Square.~~

Now I have not only urged this upon you, but upon them as well.

Mr. Moog: I'm sorry, did you ask me as well?

Mr. Shibley: Yes. And the indications I am getting from Hydro are that they need your dates. No, they think they executed theirs on November 1, but they are double checking. Now I am very anxious to have, for the assistance of this committee, what were the dates....

Mr. Moog: We will do our best, Mr. Shibley, and I think it is a question of.....

Mr. Shibley: Yes. Now the problem we have is this; simply put, that a document is not an agreement until it is signed by both parties and there is delivery of that document. So between you and Hydro I am still unclear as to when, within the period around the beginning of November - November 1 - whether before, on November 1, or thereafter the documentation in question was actually signed.

Mr. Moog: Can I try to help you on it as I recollect?

Mr. Shibley: Yes surely.

Mr. Moog: Just to the best of my recollection, ~~with~~

Mr. Bradshaw, Mr. Coles and everybody involved, we'll try to find the dates to tie it in with. But it is my recollection that everything was finalized on November 1. I believe it was around that time that I went down ~~the~~ Equitable once more to see just what would ~~be~~ happen there.

Mr. Shibley: Well, I would like you to double check that, as I have asked Hydro to do. And if you might get together, your people with them.

Mr. Moog: Yes.

Mr. Shibley: Because without that chronology, I must ask you this; this committee is interested in knowing whether the commitment from the Prudential, which was evidence by the two letters, -- the letter of November 8 which said that it had been approved subject to their finance committee approving, and the letter of December 21 saying that the finance committee had approved on December 12, -- when in relation to those commitment letters, the documentation between

H-2034-2

(Mr. Shibley)

you and Hydro was actually complete.

Mr. Moog: It is my recollection it was complete on November 1, but I will check this once more and certainly help you on that.

Mr. Shibley: All right. Fine. Now then, there was another undertaking...

Mr. Allan: Mr. Chairman, I wonder if I might ask one question before you leave that; just relating to an answer that Mr. Moog made to your question, when he said that if Prudential hadn't gone through with this that then the credit that would come to Hydro as a result of the lower interest rate would have been important. I am not able to see how that would have been important. I don't think they had a chance in the world of getting a lower interest rate.

Mr. Moog: Very good point, Mr. Allan. Suppose we would have had to fall back on what I always, to myself at least, called the European reserve—and we would have talked say $6\frac{1}{2}$ or $6-3/4$ or 7 per cent, and the exchange rate risk at that time of course would have been Hydro's too, but for that they would have had the benefit of ~~the~~ a lower interest rate. To that extent they would have benefited, ^{if} that would have been necessary, ^{if} the North American money market would have been kaput, as it is today so to speak, for that sort of borrowing.

Mr. Allan: I haven't heard any evidence which would give me much confidence that you were going to be able to do that.

Mr. Moog: Well, I didn't particularly want to do it, but it certainly is something which is there, and is there today still. I ~~Something~~ something which certainly went through my mind before we went down to New York again.

Mr. Shibley: Now there are a few points on the building that I want to cover with you.

In your January 24 proposal you listed certain items that formed, I think, a total of 92 cents in additional rental rate emanating from special features of the building.

Mr. Moog: Yes.

H-2034-3

Mr. Shibley: And I asked you by memory, the VVR system, that is the mechanical system you had in at an extra of 55 cents.

Mr. Moog: That's right.

Mr. Shibley: So that you are saying that because of your unique system of mechanical installation, an extra ⁵⁵ cents, multiplied against the rentable area, being 1.2 million square feet...

Mr. Moog: Yes.

Mr. Shibley: Would generate \$660,000 per year additional rent.

Mr. Moog: Yes, the reason we put that figure ⁱⁿ ~~as~~ this is because there are savings in space involved, and if you compute that and calculate that all in, we believe it is worth in that range.

Mr. Shibley: That is the only thing I wanted to establish with the committee, however; ~~the~~ the extra rent that is being paid for the VVR system is \$660,000 per year ~~and~~ over the 30 years of the contract?

Mr. Moog: That was a very rough calculation in our submission. I would say that it is in that ball park.

Mr. Shibley: Now in addition, are you intending a royalty to be paid as part of the capital cost of that system?

Mr. Moog: No, this is where I think the royalty would be part of that.

Mr. Shibley: I want to be clear on that because I had seen indications of a claim for as much as \$1.75

H-2035-1 follows

Sept. 4/73
2.30 to 2.35 pm
DT(Mr. Shibley)

--I want to be clear on that because I had seen indications of a claim for as much as \$1.75 per gross foot of ^{the} building or an extra \$2 million for ~~relax~~ royalty, but you are saying you are not claiming that?

Mr. Moog: As I recall, Mr. Shibley, and I am just trying to expedite this.

Mr. Shibley: Yes, all right.

Mr. Moog: As I recall it, the amount there, that 55 cents, would include a royalty because what we are really saying is if you use our system you get more space. Therefore, if you ~~convert~~ ^(Re) that space into rentable ~~area~~ area and into dollar savings, it is worth that much difference. That's really what we are saying.

Mr. Shibley: All right, but to be clear on this then, when the time comes to effect an appraisal of the value of this building

Mr. Moog: Yes.

Mr. Shibley: And I am purposely using the wording in the agreement, "appraised value"

Mr. Moog: Yes.

Mr. Shibley: It is not intended by Canada Square to claim a royalty in respect of ^{the} mechanical installation?

Mr. Moog: I think we would have to leave that entirely up to the capability of the appraiser. We certainly wouldn't ask for any royalty.

Mr. Shibley: No, Mr. Moog, because if you are including it in the rental, by including 55 cents in your \$4.92, then you ought to make it clear to the appraiser that it is not to be an ~~added~~ added item in his evaluation of the building. You shouldn't get it both ways.

Mr. Moog: Mr. Shibley, the appraisal, I think, has to stand on its own feet. I think that it's most important that a competent appraisal firm be selected who will use their own judgement on it.

Sept. 4/73
2.30 to 2.35 pm
DT

Mr. Shibley: Well, then, Mr. Moog, in that event, you are telling this committee that, should the appraiser take into account the added value created in this building by reason of the VVR system, that you will have that added to the capital cost of the building?

Mr. Moog: I am ~~not~~ really saying that.

Mr. Shibley: I am sorry, the appraised ~~a~~ value of the building.

Mr. Moog: I am just not trying to interpret the ~~apprais~~ appraisal, Mr. Shibley.'

Mr. Shibley: Well, I'm saying, if he does that, then you will get an allowance for that within the \$34.00. You will also simultaneously over the term of 30 years be getting \$660,000 additional rent for it.

Mr. Finlayson: Mr. Chairman, it seems to me that these are the kind of arguments that are going to be addressed to the individual who is ultimately called upon to make such an appraisal, ~~and~~ if these points are valid, I am sure that the valuator will give effect to them. If they are not, he will not. I don't see why, at this stage, Mr. Moog should be asked to frame out an argument which he may or may not make when the time comes.

Mr. Chairman: I appreciate that position, Mr. Finlayson. It ~~is~~ of course, one of the problems, that this body ~~is~~ ~~to~~ to investigate the terms of the contract and one of the original charges was that Canada Square might be getting excessive returns on this transaction, ~~and~~ if we can't determine what those returns may be, because it may later be before some other ~~court~~ ^{Forum}, it makes it rather difficult for us to do our task as well. I think the question is a reasonable and fair one. I can understand you not wanting Mr. Moog to be committed in case there should be some future argument over it, but I also think it's essential for us to try and determine the contract which we are charged to look at. As I also understand it, the terms of what is said here are not necessarily binding in any other court that may be looking at it, although it may be difficult for Mr. Moog at that point to change his position. ~~That's~~ That's our problem

Sept. 4/73
2.30 to 2.35 pm
DT

(Mr. Chairman)

and I certainly understand your problem. I do, however, think it's a reasonable thing that that question should be pursued so that we can complete our task.

Mr. Moog: Maybe I can ~~answer~~ answer it this way, Mr. Shibley. I don't think we have to resort to royalties.

Mr. Shibley: Fine; that doesn't ~~help~~ help.

Mr. Moog: Well, I really don't think I ought to be put

~~for an argument to hit to~~
~~Mr. Finlayson: Well, Mr. Moog explained the appraiser.~~

Mr. Shibley: Mr. Moog, a claim for royalty of \$1.75 a foot runs to something in excess of \$2 million. We are not talking a small sum of money and if you were allowed ~~xx~~ \$2 million towards the \$44 million on a royalty basis, then Hydro would wind up with a building for which it had paid an extra \$2 million for the VVR system while ~~simultaneously~~ simultaneously paying an extra \$660,000 per year rental on the basis of the proposal you submitted.

Mr. Moog: I don't quite see it that way, Mr. Shibley.

Mr. Shibley: Well, how do you see it? Because your proposal says that in the \$4.92 rate ~~→~~

Mr. Moog: Yes.

Mr. Shibley: ~~→~~ 55 cents of it is an extra because of the VVR system, ~~→~~

(H-2036 to follow)

September 4/73
2:35-2:40 pm
C.B.

(Mr. Shibley)

~~do you see it? Because your proposal says that in the
\$4.92 rate.~~

~~Mr. Moog: Yes~~

~~Mr. Shibley: The rate of it is an~~

~~extra because of the VVR system.~~ it is extra rental rate,
on page four of your proposal.

Mr. Moog: Perhaps I could sum it up this way. We had a rough idea that by going into a different quality building, still a very good office building, we could save very substantial amounts of money. It is not just the air conditioning itself, it is the curtain wall too, which is involved in this.

Mr. Shibley: Would you just stay on the one topic please? I'm trying to make it as simple as possible, Mr. Moog, and I'd just like some simple answers.

In your proposal to Hydro it was indicated that the rate was \$4.92.

Mr. Moog: Right.

Mr. Shibley: In part because there were the special features, one of which was the VVR system for which you were contending that 55 cents per square foot per annum should be allowed. Now that's \$660,000, actually it's more than that because it is—yes, it is \$660,000 per year additional rental for the special extra feature of the VVR. Now I want to know whether—and I must tell you that I'm instructed that a royalty was indicated to Hanscomb Roy, and that the amount was some \$2 million.

Now I want to know whether you are asking for it, so to speak, on both ends? AS a capital cost allowance of \$2 million and as additional rental.

Mr. Moog: I just don't want to take issue with the appraisal right now. I hope I don't have to.

Sept. 4/73

2:35-2:40 pm
C.B.

Mr. Shibley: Well then, you are going to—you see, the appraiser is only going to appraise the building, and if he views.....

Mr. Moog: No, no, he appraises all the features of the building. Not just the....

Mr. Shibley: I agree. So he appraises all the features and he'll appraise the VVR system.

Mr. Moog: That's right.

Mr. Shibley: And if he concludes that because of that system the building has an appraised value of \$2 million more, he'll allow you that.

Mr. Moog: That's quite possible.

Mr. Shibley: And while you're simultaneously charging extra rental to Hydro in the amount of \$660,000 a year.

Mr. Moog: Extra rental only in reference to something which didn't materialize anyway. Isn't that what you are saying?

Mr. Shibley: No, I'm not saying that at all. You're putting this system in aren't² you?

Mr. Moog: Oh yes.

Mr. Finlays: Mr Shibley, with great respect, are you correct in what you are saying? I mean, if the appraiser is going to value the building on the basis of the lease, ^then certainly he will arrive at one value. But I don't see anything inconsistent with his looking at the building without looking at the lease, and in a proper case attributing some kind of a royalty payment with respect to the VVR system. In other words I don't agree with your suggestion that he's charging for it twice.

Sept. 4/73

2:35 - 2:40 pm
C.B.

Mr. Shibley: Well, I'll make myself clear then.

Canada Square is entitled to borrow \$45 million provided the appraised value of the building is \$45 million. Let's take as an example that the appraiser comes in and says, "Yes, having ~~the~~ regard for all the special features built into this building, including the VVR", which he puts an inherent value on of an extra \$2 million, "it is worth \$45 million?"

Mr. Moog: All right.

Mr. Shibley: Now Canada Square then has realized \$2 million on the mortgage financing and avoided an abatement of rent by reason of the VVR system, \$2 million in pocket to Canada Square, because everything else has been valued at \$43 million and the extra \$2 million on account of the VVR.

~~Now~~ And yet Hydro is being required to pay an extra \$660,000 rental.

Mr. Finlayson: For a superior system, I don't quite understand,...

Mr. Moog: I don't follow either.

Mr. Allan: Mr. Chairman, with very ~~great~~ great respect, if the building costs \$45 million....

Mr. Shibley: ~~The~~^A cost valued.

Mr. Allan: Valued at \$45 million, ~~it~~^{is} is only reasonable that they would pay more rent than ~~that~~ if it had been valued at \$35 million, isn't it?

Mr. Shibley: I'm missing my point, I can't get through.

Mr. Chairman: In addition to that, there is a possibility of paying a rental, at least a royalty.

Mr. Allan: Well if you are renting something that is worth \$45 million, can you expect ~~that~~ to rent that for the same price as something that is worth \$35 million?

Sept. 4/73

2:35 - 2:40 pm

C.B.

Mr. Chairman: No I wouldn't think so, but what do you do about payments for the use of the special system?

Mr. Allan: But I think it is as simple as that.

Q Mr. Chairman: Well, I can't see an appraiser taking it into consideration both ways.

Mr. Deans: I would like to ask a question. ~~Is the appraiser going to take it into consideration both ways? Is it not a fact~~

236 to follow

Sep. 4/73
2.40-2.45 pm
V.H.

(Mr. Deans)

~~Let me ask a question~~ Is the appraiser going to take into consideration both ways. Is it not a fact that because Hydro has agreed to pay the additional money for the system that they have then agreed that the system is better or different or in some way or other is going to add to the value of the building?

Mr. Allan: To the value of the use of the building.

Mr. Deans: Well, that's obvious. I am trying to see for -- I can understand what Mr. Shibley is asking about and I am wondering whether, by virtue of Hydro having agreed to pay the 55 cents that Hydro hasn't by themselves said that the VVR system is better and therefore have added by their own agreement that area to the area that will be appraised by the appraiser.

Mr. Shibley: Well, I am not going to pursue it further. I wanted to get only one position clear and that's whether Canada Square ~~were~~, in addition to claiming this as an item to establish their rental rate, was going to claim it as part of the evaluation process and I gather Mr. Moog says he is going to leave it up to the appraiser and I can't get beyond that. Mr. Moog --

Mr. Deans: Well, if the -- I am sorry Jim.

Mr. Bullbrook: All right. Go ahead.

Mr. Deans: I just want to ask, you say you don't want to take issue with the appraiser now, the question I want to ask you is simply this. If the appraiser does not include it, what will be your position?

Mr. Moog: I would think if it is a reputable firm and the appraiser can convince us that it ought not be included, then I don't think we would ask for it.

~~-----~~

~~-----~~

Sep. 4/73
2.40-2.45 pm
V.H.

Mr. Deans: Okay. But do I take from that the ^{at} moment that the appraiser would have to convince you that [^] it ought not to be included?

Mr. Moog: I don't think really that we would even argue that point because in more likelihood than anything else, I think the appraiser ^{at} may say ^{3 million} 47 ^{maybe 32} and then ^{million} ~~the~~ million will be added and it comes out to \$49 million - what then? ~~much~~ ^{much} You know, that's what it looks like ~~more~~ more than not.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: I was just going to help you, Mr. Shibley, in this ~~area~~ respect. I know that you were concerned about the question of the royalty payment now I don't think the question was ever asked if royalty consideration was part of the 55 cents. Was it asked?

Mr. Shibley: No. I think he -- I didn't ask that. I will ask the question. I thought he might have answered ^{it}.

Mr. Moog: I thought I said that I think part of that would show that there is a ~~benefit~~ benefit in savings of floor space ~~any~~.

Mr. Shibley: Mr. Bullbrook is asking when you figured up the 55 cents were you contemplating compensation for your special system, your patent or whatever?

Mr. Moog: I can't reconstruct that right now, Mr. Shibley, I am sorry.

Mr. Bullbrook: You see, that's -- I think you will agree with me there, Mr. Moog, it is important because where Mr. Shibley lost me, and I say this most respectfully, it's the question of the royalty payment being doubly charged or being a benefit accruing to Canada Square twice. I frankly see Mr. Shibley's point, but if in assessing the 55 cents, Mr. Moog, that was an assessment of your actual costs for the installation of the VVR system exclusive of royalty payment, then of course it answers the questions somewhat that Mr. Shibley or it ~~is~~ certainly resolves the dilemma we have.

Sep. 4/73
2.40-2.45 pm
V.H.

(Mr. Bullbrook)

If you hadn't included royalty consideration in the 55 cents, then its academic as far as this committee is concerned whether it is used in the ultimate appraisal. Do you agree with me, Mr. Chairman?

Mr. Shibley: Bearing in mind also that there is in evidence the claim for an extra \$2.50 for the mechanical installation. The difference between say ~~\$5~~^{\$5} and ~~\$7.50~~^{\$7.50} is claimed for this special system. That ~~\$2.50~~^{\$2.50} in itself is a differential that represents ~~some~~ in excess of \$3 million by construction of this building, so that that's being claimed as part of the appraisal is it not?

Mr. Moog: Yes, that certainly is.

Mr. Shibley: And in addition you are claiming on the rental rate on a per annum basis the extra 55 cents per foot, is that right?


Mr. Moog: I really think rental rate and capitalized value ~~from~~

Mr. Shibley: When I say extra, it is part of how you made up your rate. Well it is, because its right in the proposal ~~of~~ of January 24 on page 4.

Mr. Moog: What we are saying is we could build ~~a~~ a building for a lot lower rental rate and maybe this is very good to cover that point ...

Mr. Shibley: I am not saying, Mr. Moog. I am still confused in that respect. If you could have anyone at all clarify ^{it} for me, I would like to have it clarified, but it just struck me that

H-2038 follows



Sept. 4, 1973
2.45-2.50p.m.
B.A.

H-2038-1

(Mr. Shibley)

~~there was some duplication.~~

Mr. Chairman : Mr. Allan.

Mr. Allan: Mr. Chairman, don't you think that when you have Hanscomb Roy and those people here that you will get some independent advice, or answers, which might be more beneficial?

Mr. Shibley: Thank you, Mr. Allan.

Mr. Chairman: We may have Hanscomb Roy's position, *but* we may not have Mr. Moog's position ~~there~~ *on the issue*.

Mr. Shibley: That's the problem.

Mr. Allan: Then I still feel that I would like, before these hearings are over, to have some idea of ~~that~~ what that phrase means as far as the valuation of the building is concerned. "Appraised value."

Mr. Chairman: I think that was one of the points that Mr. Shibley was now trying to establish with Mr. Moog.

Mr. Allan: No, we should have an independent witness once in a while.

Mr. Chairman: Well, I am not so sure Hanscomb Roy can be considered ~~independent~~ independent on that either. They are working for Hydro.

Mr. R. G. Hodgson: Mr. C hairman, I would like to ask Mr. Moog a question, and that is, there is a standard procedure of evaluators of buildings?

Mr. Moog: Right, Mr. Hodgson.

Mr. R. G. Hodgson: And ~~that~~ you mentioned the ~~that~~ other day, as to a standard procedure. Is it your understanding that such

Sept. 4, 1973
2.45-2.50p.m.
B.A.

(Mr. R. G. Hodgson)

a royalty payment or valuation as we have been talking about, would be in that evaluation procedure?

Mr. Moog: If that qualified appraiser^{or} at this juncture of time feels that this system is that much superior, I would think he might include a royalty. If he feels not that way inclined, then he would not allow a royalty. I think that is up to the man to establish it.

Mr. R. G. Hodgson: In your experience, then, it is rather an individual—

Mr. Moog: No, I think ^{what} ~~that~~ he will do is that he will examine ^{comparative} ~~compare the~~ buildings, and he will find out what tenants on the market would pay for ~~features~~ features such as this. I think that is how he will react, and I think that is the only fair way to react.

Mr. Deans: I don't understand, I'm sorry, but I thought royalties were paid to the inventor for the use of the product, and that it had nothing to do ~~with~~ with whether it was better or worse. If someone decided to use it they paid the royalty. I don't see how an appraiser is going to look at it and say it is a better system ^{and} ~~and~~ therefore we will pay ~~royalties~~ royalties, or it is a worse system ^{and} ~~and~~ we won't pay royalties. I was under the impression that the ^{appraiser} ~~appraiser~~ will simply look at the system and if that system was used ^{and} ~~and~~ royalties were ~~accrued~~ ^{accrued} from that system that the royalties would automatically be paid.

Mr. Moog: No, Mr. Deans, I am sorry but I disagree with you.

Mr. Deans: Surely, the purpose of a royalty is to ~~protect~~ protect the inventor from someone else using that^P

Mr. Moog: This is what we have so far done, we haven't marketed the system.

Mr. Deans: Okay, and that royalty is payable whether or not that product is a superior product, or not as long as the person ^{who} ~~person~~ uses it, uses it.

Sept. 4/ 73
2.45-2.50p.m.
B.A.

Mr. Moog: Maybe I can clear it up this way, —

Mr. Deans: Is that not so?

Mr. Moog: Mr. Deans....

Mr. Chairman: That is my understanding, yes.

Mr. Moog: If we would pay royalty for something which was not worth its royalty, whatever it is, say a ceiling system for instance, and the appraiser would have to look at that and say, "Ah you have \$1,200,000 in for a ceiling system," 10 cents a square foot, or a dollar a square foot, or something like that, "that ceiling you could have bought a similar ceiling elsewhere without paying that royalty". He would then, as a good appraiser, disallow that ~~any~~ amount. And that is the analogy I was trying to draw your attention to.

Mr. Deans: What I am trying to get ~~at~~ at is, the system that you are putting in ~~in~~.

Mr. Moog: It is just that *it will be allowed or not allowed* on the appraiser's part, which I think has to be his judgement.

Mr. Deans: Okay. I am a little bit naive in these sorts of things, and I don't understand, first of all, how an appraiser would determine whether or not the system was better. They would say it was, I am prepared to concede that the system works, and therefore — well I would have to concede that, that the system works, and that the system is somewhat different from other systems in existence, and that the ~~appraiser~~ appraiser might look and determine the difference, and he might say that it works well, but if there are then royalties which can be claimed by the inventor as the result of someone putting into use the system which he invented, he is entitled to the royalties, whether the system is better or worse.

Mr. Moog: You see, this is what the ~~appraised~~ appraised value ~~means~~ means. He is to establish value, not what somebody might have foolishly paid out for it, but what it really is worth. That is his job.

Mr. Shibley: We will get back to it anyway.

Sept. 4/ 73
2.45-2.50p.m.
B.A.

Mr. Deans: Am I wrong?

Mr. Shibley: I would like to leave it at the moment.

Mr. Deans: All right.

Mr. Shibley: There ~~are~~^{are} some ~~are~~ questions that I would

like to pursue with you, Mr. Moog, referable to some of the questioning I led you through last week. We talked about the control set_up for the computer at Eglinton to operate the mechanical installations at Hydro.

~~_____~~

~~_____~~

~~_____~~

(Tape H-2039 follows)

H-2039-1

Mr. Moog: Yes.

Mr. Shibley: Is there a rental charge for use of a Bell Telephone line from the Hydro head office building to the Transamerica Building for monitoring the airconditioning system from your master control?

Mr. Moog: I understand that there will be.

Mr. Shibley: Yes. Does the tying in of the Hydro building system to your master control increase the number of personnel required to operate your computer centre?

Mr. Moog: At Canada Square, Yonge and Eglinton?

Mr. Shibley: Yes.

Mr. Moog: Yes it will. And as a matter of fact I believe that we will have to staff it with two additional men. At the moment we are just taking readings intermittently. ~~Our~~ ^{when} computer, at that time ~~and the~~ ^{Hydro} ~~new~~ system will be hooked ⁱⁿ we will have to man it with three shifts a day, 24 hour basis. Right now we have got one man once in a while taking readings. So there will be two more men.

Mr. Shibley: There is going to be a scanner in the control centre of the new Hydro building. Is that correct?

Mr. Moog: That is right.

Mr. Shibley: And does that require an operator for any portion of the 24 hour day?

Mr. Moog: The contemplation at the moment is, and these are all electronics, and I am really not that familiar with it, but I understand that there will be during the daytime somebody manning that scanner.

Mr. Shibley: Now then, there is provision now being made for the delivery of steam to the Hydro building for snow melting. Is that correct?

Mr. Moog: That is correct. Yes.

Mr. Shibley: Is that to be included in the basic \$34 per square foot?

H-2039-2

Mr. Moog: Whatever it costs us to make the installation; yes.

Mr. Shibley: Yes. It is not to be the subject of an extra charge to Hydro?

Mr. Moog: No, sir.

Mr. Shibley: While I am on this matter. You are familiar with the provision in paragraph 8 of the contract that Mr. McCallum was reviewing as it relates to the preliminary specifications and the ¹ as a guideline? Okay?

Mr. Moog: I would have to refresh my memory again, but maybe we can do it without wasting time, if I get your question. On page 8 "Any change in the building requested by Ontario Hydro prior to its proposal pursuant.." so on. *yes?*

Mr. Shibley: ~~Now~~ Now you know that Mr. Candy, interpreting ^{clause} ~~this clause~~ had attempted to include carpeting throughout the building?

Mr. Moog: Yes.

Mr. Shibley: What interpretation does Canada Square put upon the right of Hydro under this clause to make changes which would be included in the \$34 as opposed to being an extra?

Mr. Moog: I think it was quite clear from the onset that carpeting was at the expense of Hydro.

Mr. Shibley: I realized that. That is a clear example.

Mr. Moog: Yes.

Mr. Shibley: But I wanted to take it beyond that. How do you view this clause to be applied?

Mr. Moog: How do I view it to be....

Mr. Shibley: Yes, for example, you have already said that the steam to be delivered is not an extra.

Mr. Moog: Yes.

Mr. Shibley: The installation of all that piping and equipment.

Mr. Moog: That is right.

Mr. Shibley: Now do I take it that is so, because it fell within the general scope of what was ~~contemplated~~ contemplated under the preliminary specifications? Or is this just a matter of you feel that that is something inherent in it?

H-2039-3

Mr. Moog: We thought it was necessary to do and that is why we did it. I really haven't studied the agreement ever in reference to anything we have done.

Mr. Shibley: All right, then I won't pursue it with you. There is this, however, you know that when Mr. Houser prepared his draft of the ~~agreement~~ agreement, the draft dated September 15; he did make provision in that draft for the production by Canada Square of its records, invoices, and so on, to assist upon the evaluation of the building. And I understand that it was Canada Square that insisted on the deletion of that provision. Is that so?

Mr. Moog: That is quite likely to be the case, yes.

Mr. Shibley: So that although the solicitors for Hydro attempted to stipulate for those particulars to be provided, you were insistent that they not be part of the agreement?[?]

Mr. Moog: WE felt that was our business.

H-2040-1 follows

Sep. 4/73
2.55-3.00 pm
V.H.

~~you were insistent that they not be part of the agreement?~~

~~Mr. Moog: We believe that was our business.~~

Mr. Shibley: Now, I want to ask you about the profits in this project. Can you tell me what you ^{would} consider to be an appropriate builders' profit, a rate - percentagewise - for construction of the building alone? I am not now talking about ~~the~~

Mr. Moog: I know what you are asking Mr. Shibley. I can only tell you I have never ^(really) to my knowledge, gone out to ~~contract~~ ~~consult~~ for other people.

Mr. Shibley: I realize that.

Mr. Moog: ~~(Inaudible)~~ ^{Other jobs but}

Mr. Shibley: I want to know what you would consider ~~the~~

Mr. Moog: I wouldn't even know.

Mr. Shibley: Well, would it be three per cent? Would it be five per cent?

Mr. Moog: I am sorry. I wouldn't put in that category of ^(a construction) ~~the~~ profit. I really would not know what would be commensurate with it.

Mr. Shibley: Did Canada Square take off calculations of profits referable to this project?

Mr. Moog: I believe you have got some of our earlier estimates which showed our costs and they came into the ~~the~~ ^{\$40} million ~~cost~~ bracket as far as the physical ~~the~~

Mr. Shibley: I have some of your material. I am wondering: Have you got other files referable to the financing and referable to the computation of profit?

Mr. Moog: Not to my knowledge, no.

Mr. Shibley: Well, I am particularly interested to know whether you computed the construction profit?

Mr. Moog: We didn't look at it that way, Mr. Shibley.

Mr. Shibley: All right. Aside from computing it, again ^{to} assist the committee as to what's going to be involved,

Sep. 4/73
2.55-3.00 pm
V.H.

(Mr. Shibley)

^(know)
you that if this were a tendered project, the builder might figure his costs and add on anything from three per cent up as his profit on the project; is that not so?

Mr. Moog: Depends on the type of contract you have. If you have a cost-plus contract, ^{where} there isn't any particular incentive to save money, you ~~do~~

Mr. Shibley: I am not talking about management.

Mr. Moog: ^{just add three per cent or} five per cent or whatever it is. You have ^{a management} ~~another~~ contract, you would do something else. If you have an upset price contract, you'd do something else ^{again}. There are all sort of variations. I think it is all commensurate with the risk, ^{the amount of profit} ~~the amount of profit~~ \rightarrow

Mr. Shibley: Mr. Moog, are you prepared to indicate to this committee what percentage profit for construction only Canada Square would consider appropriate for this project?

Mr. Moog: I don't think that ^(we have) ~~we~~ ever considered that as ~~an~~ \rightarrow

Mr. Shibley: Quite apart from having ~~never~~ considered it, would you ~~say~~

Mr. Moog: I don't think we ever ~~say~~

Mr. Shibley: ~~say~~ please tell the committee your present views?

Mr. Moog: Even at this moment, I wouldn't know what to put on that. That really isn't what we are talking about.

Mr. Shibley: Are you ~~do~~ \rightarrow

Mr. Moog: We are not talking construction profit, if we make a profit.

Mr. Bullbrook: Well, is ~~the~~ construction profit, then, an inappropriate method of looking at it?

Mr. Shibley: Well, I think Mr. McCallum may ^{*}help.

Mr. Allan: Mr. Chairman, aren't you going at it from the wrong end? Shouldn't we find out from the person ^{or} ~~the~~ \rightarrow

Sep. 4/73
2.55-3.00 pm
V.H.

(Mr. Allan)

type of person who is going to appraise this building, what we are ~~gm~~ talking about in that phrase, in that sentence, "appraised value"?

Mr. Bullbrook: Mr. Allan, we have an exhibit here where Mr. Candy assessed this thing and I am sure counsel is finally going to get to this | Exhibit 83 which has been in the back of my mind for about two and half days ~~and~~ ^{what you're about} Is this not ~~materialable~~?

Mr. Shibley: We will eventually get to it but I had thought, Mr. Moog, that it was very clear that in a project such as this there are three elements of profit, one being construction, the ~~second~~ second being the difference between the cost of maintaining and what you are charging for it, and the financing of the building itself would provide a profit. I want to find out from you what, if anything, are the calculations ^{of} ~~the~~ Canada Square?

Mr. Moog: We haven't made any and I wouldn't know, Mr. Shibley. We looked at it differently.

Mr. Shibley: Perhaps you should see the exhibit to which Mr. Bullbrook is making reference, exhibit 83. Have you ever seen this before?

Mr. Moog: I don't recall, no. I might have seen it in the proceedings. ~~the~~

Mr. Shibley: You'll notice in this break-out there's a calculation of profit of 45 cents per square foot on the rental ~~to~~

Mr. Moog: Where would that be? On the second page?

Mr. Shibley: On the first page.

H-2041 follows

Sept. 4/73
3.00 to 3.05 pm
DT

(Mr. Shibley)

~~per square foot on the rental~~

~~Mr. Moog: Where would that be, on the same page?~~

~~Mr. Shibley: On the first page.~~

Mr. Moog: Yes, I see it.

Mr. Shibley: I think this is perhaps of some importance ~~is~~ now, because in fact, although the proposal sets forth \$3.35 as the cost of financing, the cost of funding \$45 million at eight per cent, amortized over 30 years is not \$3.35. It's \$3.02.

Mr. Moog: I don't think that's quite correct, Mr. Shibley. I think it comes closer to \$3.20--something because I think this mixes up rentable area and gross area if I may --

Mr. Shibley: I am going on certain information I saw in Mr. McCallum's file. Is that wrong?

Mr. Moog: I have -- well, I will tell you, this morning I had a quick glance at some of that and I would think that this is wrong. I think \$3.02 is wrong.

Mr. Shibley: I see. Well, we will let Mr. McCallum answer it for himself when he is in the witness box but then it goes on the next page: "this profit will be 45 cents per square foot per year for 30 years. The builder, however, is entitled to a builder's profit on the construction of the building of, say, 3 per cent, or \$1,200,000, which is 9 cents per square foot." Now, does that accord with your understanding of what is an appropriate construction profit?

Mr. Moog: I think I answered that earlier, Mr. Shibley. I really ~~would~~ wouldn't know what an appropriate construction profit ought to be on that. I think if you today -- well, let me try to just elaborate a bit. I don't want to be difficult on that, but if you asked a builder today, "Build me the best building you know how and I will give you a profit of so much," and then you get an inflation and you have no come-back at ^{Hydro}~~Hydro~~ whatsoever, I think he could lose his shirt and many of them probably have, so I really don't think that this is the way to ~~attack~~ ^{say} attack this, if I may ^{say} so, and I am not trying to be difficult on it.

Sept. 4/73
3.00 to 3.05 pm
DT

Mr. Shibley: Well, as Mr. Bullbrook was quick to recognize, ~~and~~ it was based on material which formed the background of this material that I was asking you those questions.

Mr. Moog: I appreciate your problem. I wouldn't think that it should be related this way myself, but then I am not the *author of this.*

Mr. Bullbrook: Well, may I ask a question?

Mr. Moog: it might well be that we could accept your statement that you don't want to look at it from the point of view of possible construction profit, but if I could go back to the first page because I'm not happy with that response. Surely to goodness with the type of operation you have, you must have ~~figured~~ *figured* out your financing over the life of the mortgage on ~~the square-foot basis.~~

Mr. Moog: Mr. Bullbrook, we didn't know what we really would end up with.

Mr. Bullbrook: No, but, sir, you knew what your rate was going to be.

Mr. Moog: We only had indication. You see, this is where we made a mistake ~~that~~ *and* we assumed everything was buttoned up and everything was one, two, three. We took the risk completely when we entered into this. We had ideas, yes, and we trusted in ourselves, as I think has become evident, but we certainly had no assurances that somebody would do this for us, give us money at eight per cent or that we would be able to get such and such contracts at such and such a price. We couldn't possibly calculate this out and I can't possibly answer you these questions.

Mr. Bullbrook: Well, I think you can ^{sir,} ~~really~~. Now, maybe you are quite right ~~that~~ at this time, July 19th, your rate was hypothetical. We happen to know it isn't now. You have made ~~this~~ a full disclosure --

Mr. Moog: That's right, Thank God it isn't, the risk is paying off, *maybe.*

Mr. Bullbrook: Is it fair for me to ask, can you tell me -- surely you must have, Mr. Coles must have, with a sophisticated organization such as you have, figured out what your financing costs

(Mr. Bullbrook)

at eight per cent --

Mr. Moog: If you had to close us ~~up~~ well, now I think ~~another~~ ^{another} answer.

Mr. Bullbrook: The only contingency is of course your cost of construction.

Mr. Moog: Well, that's a big contingency.

Mr. Bullbrook: I ~~am~~ realize it's a big contingency but at \$34.00 per square foot, ^{have} you ~~had~~ figured it out?

Mr. Moog: Well, do you want to do some arithmetic on this right now?

Mr. Bullbrook: Well, not necessarily. I don't want to interrupt counsel unduly, as I am. Can you --

Mr. Moog: I have already pointed out that this one figure is definitely in error by quite a bit and when that --

Mr. Shibley: I am wondering this. Mr. Coles will be giving evidence some time in the immediate future, I hope, I am wondering whether you would instruct him --

Mr. Moog: I think I might be able to help you.

Mr. Shibley: -- to prepare and to provide to me in advance what are the present calculations of Canada Square based upon the now known figures as to cost of financing, the rental rate, etc.

Mr. Finlayson: Perhaps I can answer that. As I understand it, there aren't any present figures but Mr. Coles would be prepared to attempt to --

(H-2042 to follow)

Sept. 4/73

3:05- 3:10 pm
C.B.

(Mr. Moog)

~~etc. can I maybe just help you.~~
~~Mr. Finlayson: Perhaps I can answer that. As I understand~~~~there aren't any present figures but Mr. Coles would be prepared~~
~~to attempt to~~Mr. Moog: Straighten ^{out} that one figure.Mr. Finlayson: Refigure these things out using the proper figures, without in any way suggesting that is the right way of doing it. Is that what you really want him to do?Mr. Shibley: NO, I must say that I, like Mr. Bullbrook, really am surprised to hear that Canada Square has not already computed itsMr. Moog: We ~~couldn't~~ couldn't, Mr. Shibley.Mr. ~~Shibley~~ Shibley: Well....Mr. Finlayson: We could make a hypothetical calculation making certain assumptions, that's all we can do.Mr. Bullbrook: Well, tell me the variables here, Mr. Finlayson, all right?Mr. Finlayson: Well, I'd just as soon Mr. Moog told you those.Mr. Bullbrook: I'm sorry, Mr. Finlayson, I shouldn't ask that of you.~~Mr. Moog here~~
Mr. Moog: Mr. Bullbrook, perhaps....Mr. Bullbrook: The only variable here is, the possibility of capital loss on a cost in excess of \$34 ^{per} square foot that Hydro doesn't pick up.Mr. Moog: That is a very, very sizable one right there.

Sept. 4/73

3705 - 3:10 pm

C.B.

Mr. Bullbrook: It might well be, but all I'm asking you, sir, is to give us what it would be at \$34 a square foot.

Mr. Moog: I'm trying to help you on that right now.

Mr. Bullbrook: I don't mean now, sir, I mean after.

Mr. Moog: Well, I think I could even straighten this one out because I believe I've got the right figure and if I'm wrong would you please correct me, Bill?

I believe that amount of financing ought to be \$3.20.

Mr. Genest: Twenty - four.

Mr. Moog: Pardon me?

Mr. Bullbrook: I don't think we should conjecture on this.

Mr. Moog: No, No, I think^{yk} that is correct. You see, if you recalculate that with the proper figures I think that should be \$³3.20. Then right away that profit of 45 cents...

Mr. Finlayson: What I'm suggesting, MR. Chairman and Mr. Bullbrook, ^{ad}that instead of having Mr. Moog make these calculations without the assistance of Mr. Coles, perhaps we should take what Mr. Shibley^{Co} said under advisement and just have Mr. Coles come up with the best set of figures that we can. And if we've got to qualify them, then we will qualify them.

Mr. Bullbrook: That's fine, I'm ~~am~~ content with that.

Mr. Shibley: Well, I want to have you anticipate me in that respect, because at the ~~am~~ moment I haven't seen anything in the files that helped me in this area and I think that something should be forthcoming from Canada Square^{to} put it's position of record.

Now there are a few remaining items, Mr. Moog. You undertook to investigate and give us the items of set-off which counsel for Canada Square said were provided to Hydro

Sept. 4/73

3:05 - 3:10 pm

.C.B.

(Mr. Shibley)

in exchange so to speak, or set-off against the cost of the reduction in the point loading of the floor, and the reduction in the lighting.

Mr. Moog: The point loading I believe ~~was~~^{was} eliminated.

Mr. Shibley: All right. You are saying you came up to the original specifications.

Mr. Moog: Yes.

Mr. Shibley: And how about the lighting?

Mr. Moog: The lighting, I think we corrected that. We have 125 foot-candles ⁱⁿ ~~the~~ stalled, versus the request that 150 foot-candles ^{be} installed.

Mr. Shibley: So that although Mr. Candy wrote you that 100 would do, you've put in 125?

Mr. Moog: I think that's not really ~~just~~ a generosity on our side, I think it needs to have that much installed foot-candles in order to maintain.

Mr. Shibley: Now, you also undertook to get us the dates of the pledge of the political fund contributions, and the dates of the two payments.

Mr. Moog: Yes, have we got those, Bill?

Mr. Finlayson: We forgot that, I'm sorry, Mr. Shibley, but Mr. Coles will have that.

Mr. Shibley: All right.

Mr. Finlayson: He's the one who will have to ~~be~~ look it up in any event.

Mr. Shibley: Now, finally, Mr. Moog, there is a note, I believe it's a diary note, on November 29, 1972, in your diary. Have you got it there? Do you have your diary there?

Mr. Moog: No, I don't.

Mr. Shibley: In any event I think I may have asked you about this earlier, but on Wednesday, 29th of November, 1972, there is a note, "Davis" and then some initials, I think you told me it was shorthand and it says "re newspaper article"

H-2043-1

(Mr. Shibley)

And then I have got ^{the} Toronto Star reprint. I am wondering whether as at the time of this entry you had had communication from Mr. Singer?

Mr. Moog: No, sir.

Mr. Shibley: Alastair Dow was making inquiries.

Mr. Moog: I shouldn't always say so quickly "~~no~~, sir". I know that Mr. Singer did call me on one instance and said that somebody was investigating - whatever date he gave I am sure is the correct date.

Mr. Shibley: Yes.

Mr. Moog: I ~~may~~ forgot that there were two... At least I don't recall that he mentioned two. I only thought he mentioned one newspaper. And I certainly don't know.

Mr. Shibley: There is also evidence, I believe, that Mr. Manthorpe called Mr. Singer, and that would probably be during the week of November 27, during which week ^{is} his best memory as to the week when he received Smith's call. And I am wondering again whether Mr. Singer.... I'm sorry... Yes, there is evidence that Manthorpe called Singer. Did Mr. Singer report that telephone communication to you?

Mr. Moog: As I recall it he reported at one time that somebody was inquiring or was going to write an article. That was my recollection of it, and I said, "That is fine."

Mr. Shibley: Now, having regard for the communications to you respecting press inquiries, I want to take you back to this entry on November 29 and ask you whether it related to the information you were receiving during November, about press inquiries

Mr. Moog: I can't recall.

Mr. Shibley: And in any event, I notice, as I say, Mr. Davis name is noted there. Did you discuss with Mr. Davis the information that you had received from Mr. Singer that press inquiries were being made?

Mr. Moog: No, sir.

Mr. Shibley: You will be pleased to know, Mr. Moog, that I don't have any further questions of you at this time.

H-2043-2

Mr. Moog: I now enjoy it, Mr. Shibley.

Mr. Chairman: Do any of the members of the committee have any questions at this time?

Mr. W. Newman: Mr. Chairman, perhaps just a general question. Mr. Moog is a very astute businessman, and we have talked about cheap money all the way through this hearing - 6½ per cent. You picked up several pamphlets in Switzerland which you apparently quite obviously made very valuable use of, in the course of your negotiations.

Mr. Moog: That is right.

Mr. W. Newman: Is it possible that you tried to have everyone thinking there might have been some cheap money available in order to make a better deal with your final and eventual company, Prudential?

Mr. Moog: Well, I have taken this pamphlet down with me to Equitable Life; no question about it. I think I have shown it to Mr. Johnson, of A.E. Ames. I am quite sure I have. He probably recalls better than I do. It was on my desk when Mr. Candy came into my office. It is possible that those people thought I could do better than even 8 per cent, yes.

Mr. Chairman: Any ~~more~~ other questions?

Mr. Bullbrook: I just want to ask a couple of questions.

I am very concerned with exhibit 83, and I know that we are going to get into it with Mr. Coles, I take it, and others. I just want to assure myself. We know that you have had an opportunity, or at least availed yourself of the opportunity, and I attribute that to vigour on your part as a business person, of significant liaison with Mr. Candy that other proposers didn't have; we know that. Would you agree with that? On the evidence that you have been able to hear?

Mr. Moog: I don't know what you are trying to say with that, Mr. Bullbrook.

Mr. Bullbrook: I am trying to be kind to you.

Mr. Moog: That's nice.

Mr. Bullbrook: In saying that I attribute your significant liaison with Mr. Candy to your own initiative as a developer.

Mr. Moog: Yes, I am sure that I put my best foot forward.

(2044-1)

Sep. 4/73
3.15-3.20 pm
V.H.

(MR. Bullbrook)

as a developer.

Mr. Moog: Yes, I am sure that I put my best foot forward.

Mr. Bullbrook: Yes. Now, exhibit 82 is a letter dated July 17, 1972, and I don't think it is necessary that it be produced. I just want you to recall that it is a letter from the Bank of Montreal, ~~as~~ satisfactorily apprising Mr. Candy of the fact that they have had a happy relationship with your corporation in the past in connection with bridge financing.

Mr. Moog: Right.

Mr. Bullbrook: I presume that had been secured by Mr. Candy ¹⁶ ~~to~~ support, at least in his own mind, if not in recommendations to the Commission, and I think the second is also acceptable that yours was a reputable and well-financed corporation. The next exhibit, both chronologically and in our exhibit book, is a memorandum prepared by Mr. Candy - exhibit 83 - in connection with his assessment of the profit picture that might be available to you with respect to construction and with respect to the life of the lease itself. Did you at ever time, sir, and have you got a copy of that in front of you?

Mr. Moog: Eighty-three?

Mr. Bullbrook: Eighty-three. Did you have at any time any discussions with Mr. Candy that might have led him to any input into exhibit 83? I ask you carefully to look at that because ^{on} ~~because~~ I really think this becomes extremely significant to our obligation, in assessing whether Hydro got a good deal or whether you got an unduly advantageous deal.

Mr. Moog: I have seen it in these hearings, ~~I know~~ ^{no doubt} ~~that~~.

Mr. Bullbrook: Yes. But I want to assure myself without - I hope that you are not going to have to come back because you have been on the stand for a significant length of time. I want

Sep. 4/73
3.15-3.20 pm
V.H.

(Mr. Bullbrook)

you to look at it really and help me in assessing whether you had any dealings with Mr. Candy that led to his evaluation on page one of the break-down of the four ninety-two and, more importantly, the third paragraph where he makes an assessment of the profit availability to your corporation based on eight per cent money.

Mr. Moog: Certainly we had no discussion on profit, ~~ever~~, because I always try to keep that for ourselves. There maybe certain input in here which we discussed -- like what?

Mr. Shibley: Mr. Bullbrook, I think I can ~~bring this to a~~ ^{quick close} to those because I ~~think~~ think it is clear from what I have seen that it was not input from Canada Square. I may be wrong on this but I believe this was Mr. McCallum's input. Am I not ~~a~~ right in that, Mr. Genest?

Mr. Genest: I am sorry, Mr. Shibley, my mind ~~was~~ elsewhere.

Mr. Shibley: These figures on page two, paragraph three, look very ~~much~~ much like Mr. McCallum's figures.

Mr. Genest: Well, they are similar to them, Mr. Shibley, but they are also similar to calculations made by Mr. Dean ~~a~~ in a memo which is part of exhibit ~~3~~.

Mr. Shibley: But I just -- I think Mr. Bullbrook ~~is~~.

Mr. Genest: I don't think they came from Canada Square.

Mr. Shibley: No. ^{Well, I'm}

Mr. Bullbrook: ~~But~~ like Mr. Renwick in some respects, I really would like to have on the record Mr. Moog's response which I take it is going to be a negative response.

Mr. Moog: I am just looking at this now. I have seen this document in these hearings and I am trying to figure out myself how best to answer. I ~~simply~~ ^{certainly} don't know ~~of~~ anything.

Mr. Bullbrook: Well, maybe my question was too ~~general~~ ^{general} because I think there would be some input, for example, the size of the building ~~itself~~ ^{itself}, I would think, and the ~~price~~ ^{price} of \$34

(Mr. Bullbrook)

per square foot. I want to put it directly, did you assist Mr. Candy in the preparation ~~of~~

Mr. Moog: No, sir.

Mr. Bullbrook: ~~Is~~ of this document?

Mr. Moog: No. The question is absolutely no.

Mr. Chairman: Mr. Gaunt.

Mr. Gaunt: Mr. Chairman, I have two really unrelated questions. The first one revolves around the matter of the patents attached to the VVR system which we have been talking ~~was~~ about. I am wondering, Mr. Moog, why your company has never market~~ed~~ these patents other than for an obvious reason that you wanted them to remain with your company ~~of~~

Mr. Moog: Yes.

~~Mr. Gaunt: I would like to ask Mr. Moog a question.~~

H-2045 follows

Sept. 4/ 73
3.20-3.25p.m.
B.A.

H-2045-1

Mr. Gaunt: ~~then~~
~~other than for an obvious reason that you wanted to remain~~
~~with our company~~ and, hence, to presumably increase your
benefits on any work that you might do.

Mr. Moog: I believe we have discussed this once
before and all I can state again is that we wanted to have them
as an edge on competition, for as long as possible. All sorts
of methods of opening up a new business again, ~~the~~ marketing
this particular aspect of a building component, and you have
to have men for it and you have to expend energy on it, finance
it. It is opening up another business. I believe it could be
profitable, but whether it to this extent would offset the edge
we have on competition, with this system, is a ^{big} question mark.
I believe if we walk into some place and say, "That is the system
we will give you" ^A it is very favourable for us as a development
~~the~~ company, to not have it marketed elsewhere. Now, Pilkington
Glass has approached us, and wanted us to sit down with them to
see whether we ~~we~~ could do something on the open market. Maybe
we will do that some day. So far we have not.

Mr. Gaunt: So that, so far you feel that the competitive
edge which this particular system ^A gives you far outweighs
any marketability potential that this system might have?

Mr. Moog: Mr. Gaunt, that is one aspect, and it is
combined also with the fact, how many things do you want to get
into, marketing, air-~~g~~ conditioning, apparatus, and so on, is
a different thing altogether again. You need ~~the~~ ^{to} staff ^{it} and you
need to organize a ~~new~~ new business. It is a combination of
things.

Mr. Gaunt: You would have to form a new company.

Mr. Moog: We ^{form a} have ~~to~~ company, we have to get people
in to do it properly, otherwise you don't make money, even in
spite of the fact that you have reinvented the wheel, or something.
It is more complicated than that.

Sept. 4/73
3.20-3.45 p.m.
B.A. 2

Mr. Gaunt: The other matter that I wanted to ask you about relates to Section 28 of the agreement whereby, under the terms of the net lease \$3.35 is paid to the mortgage holder as an amortization payment. Now, I am wondering, ~~mathematics~~ mathematics has never been one of my strong ~~subjects~~ subjects, and maybe I am missing something here ^{but} but I was trying to sort out what the payment from Hydro to Canada Square will be.

Mr. Moog: *Well,*

Mr. Gaunt: ~~the~~ I realize the \$3.35 goes directly to Prudential.

Mr. Moog: No, not quite right, Mr. Gaunt.

Mr. Shibley: That is the point we were getting to before.

Mr. Moog: Yes, I think I can clear that one up, and if I made an honest mistake, Mr. ²~~Goth~~ maybe will correct me.

Mr. Shibley: If you add \$3.35 and \$1.45 you will not get \$4.92.

Mr. Moog: No. I understand the amount today ~~is~~

Mr. Shibley: That's a misconception.

Mr. Moog: ... or the amount will be closer to \$3.20 a square foot.

Mr. Gaunt: Oh, that is what you were talking about in exhibit 83.

Mr. Moog: That is right. That we don't see at all. It goes directly to the Prudential.

Mr. Genest: ^{According to} Our figures, ~~it is \$3.24 that is~~ ^{\$3.24 is the amount} required to amortize the \$45 million at eight per cent.

Mr. Moog: *Well it probably is in that range.*

Mr. Shibley: I will be dealing with that with Mr. Coles, and ~~the~~ others, but the fact of the ~~the~~ matter is that - I think we have all been distracted - if you take the \$4.92, you don't deduct \$3.35 as the cost of financing. It is less than that. ~~Mr. Gaunt~~ I thought it was \$3.02 from the figures given, but Mr. Genest says \$3.24 is the cost of funding \$45 million at eight per cent ~~over~~ 30 years, so if you do a little simple mathematics, you get \$1.58. *That* is what is left.

Mr. Moog: For everything.

Sept. 4/ 73
3.20-3.25p.m.
B.A.

H-2045-3

Mr. Shibley: For everything. So, if maintenance ~~per~~

Mr. Genest: \$1.68.

Mr. Shibley: ~~Yes~~ Thank you. So if maintenance costs

\$1.45, you have 23 cents surplus. If maintenance costs something less than \$1.45 that increases. If maintenance is more, it is reduced. But we have been going along on the basis that the \$3.35 was an amount needed to fund. IN fact, the way that \$3.35 evolved, Mr. Moog, was to fund a sum more than \$45 million. Is that ~~no~~ so?

Mr. Moog: I believe it was referable to ~~six~~ eight and a quarter per cent.

Mr. Shibley: Well, either that or it would fund more money.

Mr. Moog: More money.

Mr. Shibley: YES, because at one time ^{and} we will be hearing on this from ^{Mr. McCallum} the amount to ~~be~~ be borrowed against this building was uncertain.

Mr. Moog: That, I think, is correct. We were ^{ourselves} trying to find out what we ought to borrow.

~~Mr. Shibley: Yes, and that~~

(Tape H-2046 follows)

Sept. 4/73
3.25 to 3.30 pm
DT

(Mr. Shibley)

~~Mr. Moog: That, I think, is correct. We will~~

Mr. Shibley: Yes, and that uncertainty projected forward until the latter part of October, 1972.

Mr. Moog: That's correct, Mr. Shibley.

Mr. Shibley: And if the amount had been larger than the \$3.35 was intended to cover ^{or} the greater amount or the greater interest rate...

Mr. Moog: Or the greater interest rate. That's quite correct.

Mr. Shibley: In fact, it turns out that what's left of the \$4.92, which is a fixed figure, is not \$1.45 but \$1.68.

Mr. Gaunt: ~~\$4.84~~ isn't it?

Mr. Moog: Well, that is --

Mr. Shibley: Oh, no, \$4.48 is an adjusted figure.

In terms of what we are talking about, it is \$4.92.

Mr. Moog: Yes.

Mr. Shibley: Because it is down to \$4.84 as a result of another set-off item. You start with \$4.92, ^{less} ~~the~~ cost of funding the mortgage ^{which} is \$3.24. It leaves \$1.68, which is all ⁱⁿ ~~for~~ maintenance and profit.

Mr. Moog: That's right.

Mr. Shibley: But I will get into this with other witnesses. I thought there were more appropriate ones.

Mr. Gaunt: Right and perhaps I should leave ^{it until such time.} ~~it in~~

Mr. Shibley: I think so too, and after you have heard Mr. McCallum's evidence, I think you will have a much better grasp of the type of thing we are about here and can more intelligently then ask questions of people like Mr. Coles, for example.

Mr. Chairman: Mr. William Hodgson.

Mr. W. Hodgson: Yes, Mr. Moog, when Mr. Candy made presentation to the commission, he made the ~~same~~ presentation that there was going to be Swiss money used for this project and it was going to be at a low interest rate. The question I am going to ask

Sept. 4/73
3.25 to 3.30 pm
DT

Mr. W. Hodgson)

you as, how much emphasis and how much sales pitch did you put on Swiss money to Mr. Candy that he would make this recommendation?

Mr. Moog: I think I explained earlier, Mr. Hodgson, that dealing with an architect who is naturally very concerned about are we able to finance, are we the sort of company who would have to pay very high interest rates, all would reflect his thinking of whether he ought to be looking at us more seriously or less seriously. So, all emphasized to him was that we are able to finance this building. If the North American market is not capable of handling it, I will have some reserves standing by in Europe which I ~~will make use of~~ if I have to. There are other complications, but certainly there is money over in Europe. I want to say something else to that which might help you. Well, it is just like this. When you first start dealing and you want to overcome all obstacles, a famous saying is, "If all obstacles first have to be overcome, nothing will ever be accomplished." I suppose ~~when~~ we started ~~out~~ dealing, I just had to assure Mr. Candy that financially, we are capable of doing it, and certainly physically we are capable of doing it, and if the North American market looks bad and should go worse, I ~~am~~ personally ~~expect~~ ^{expected} it to go worse much sooner than it did in effect. I was actually quite thankful that it ~~was~~ held up as well as it did, and therefore I looked at the European market because I thought, well, if the North American market tries up, then at least I have got something standing ~~up~~ by over there, and at that time I did talk European money to him, yes.

Mr. Chairman: Any other questions of Mr. Moog?

Mr. R. G. Hodgson: Yes, I ~~would~~ would like to ask question, Mr. Moog, in regard to exhibit 17.

An Hon. Member: I wonder if Mr. MOog could have exhibit

??

Mr. R. G. Hodgson: Now, at the bottom of page 2, Mr. Moog, ~~the~~ the very bottom paragraph, is that a true statement that you could open the books?

Mr. Moog: We never open our books, and I don't know where that statement comes from.

Sept. 4/73
3.25 to 3.30 pm
DT

Mr. R. G. Hodgson: ~~Wouldn't~~ you agree that this section

would ~~slightly~~ slightly lead Hydro to believe that at some point in time they could view your books as to costs and profits?

Mr. Moog: I don't know what happened within Hydro and I don't know who wrote this and where this comes from.

Mr. R. G. Hodgson: Thank you, Mr. Chairman.

Mr. Chairman: Any other questions? Well, Mr. Moog,

as
~~and~~ you know, we may wish to recall you, but in the meantime, in any
~~event we are through with our questioning of you so thank you very~~
~~much.~~

Mr. Moog: ~~I can go on building the building?~~

Mr. Chairman: ~~Yes.~~

(H-2047 to follow)

Sep. 4/73
3.30-3.35 pm
V.H.

(Mr. Chairman)

in any event, we are through with that questioning of you, so
thank you very much.

Mr. Moog: I can go on building the building? *Thank you.*

Mr. Chairman: Yes. We will take a ten minute
adjournment if we may and ask Mr. McCallum to be ready at
that time.

The committee then took recess.

H-2048 follows

Sept. 4/73
3:40-3:45 pm
C.B.

Mr. Chairman: Ladies and gentlemen, I call the committee meeting back to order, and welcome Mr. McCallum back to the stand. I hope you are going to take your counsel's advice today, Mr. McCallum.

Mr. McCallum: ^{Thank} ~~Thank~~ you, Mr. Chairman, I am certainly going to try. I am bruised from not having done it last time.

Mr. Shibley: Mr. McCallum ~~and~~

Mr. Renwick: Mr. Chairman, could I ask Mr. McCallum two or three questions that arose out of his - or came to my mind out of his evidence last week.

Mr. Chairman: Mr. Renwick.

Mr. McCallum: I'd like to say something about that arithmetic of the \$1.08 we were talking about ~~and~~ I had my advisors in behind, quarrelling with my arithmetic, and I thought it ~~could~~ ^{would} be salutary today if I demonstrated to the ~~committee~~ committee and to my advisors that the arithmetic I was giving you is accurate and does work. I thought I might start with a little edge, I'm perfectly prepared to bow to you, Mr. Renwick, if you want to ask your questions first, as long as I don't forget to mention how that does work.

Mr. R.G. Hodgson: ^{He} ~~A~~ won't forget.

Mr. Renwick: I won't be dealing with the \$1.08. Is it my - let me start this way: My questions relate to the traditional call for tenders on a particular project and to compare it with the more recent innovation of calling for proposals. Perhaps, to put it bluntly, it has become normal, and, certainly from the government's point of view, accepted policy, but I think also policy for a number of public bodies whether they are government public bodies or not, to call for tenders on the traditional type of construction contract, and everybody is familiar with that type of a call or reasonably so.

But I'd like to ask you from your experience a couple

Sept. 4/73

3:40-3:45 pm

C.B.

Mr. Renwick)

of questions related to whether or not calling for tenders is appropriate in the case of proposals. But before I ask you those questions and since Mr. Shibley didn't ask you to qualify yourself with your expertise the way he asked other witnesses to do so, I think probably because he assumed that everyone knew that despite your modesty that you are an expert in the field. I take it that you are an expert in the field of the legal and other implications that relate to development work, as we have come to know it in the last 10 or 15 years ~~in this~~ in Metropolitan Toronto and in the province.

Mr. McCallum: The qualification of an expert, as you know, requires some judgement, but, subject to that, I certainly think that I've had a great deal of experience dealing with development work of one kind or another over the past 15 or 20 years, yes.

Mr. Renwick: And that it was for that reason that you were selected by Hydro, so far as you know, to act for them in connection with these documents?

Mr. McCallum: Yes, that's what their documents say, At the time I think that I was selected by Hydro for really two reasons, I suppose that was maybe a third reason.

~~One was that I had acted for Hydro~~

H 2049 to follow

Sep. 4/73
3.45-3.50 pm
V.H.

(Mr. McCallum)

~~For really two reasons I suppose that was maybe a third~~
~~reason.~~ One was that I had acted for Hydro when this site was rezoned so as to permit the construction of their new Head Office - that was some years ago - and I was familiar with it in that sense, and I had had quite a bit of experience with Hydro people at that time, and that enabled them to get some knowledge of my knowledge of development matters because we were dealing with City Hall and the question of development. Subsequently, I had acted for Hydro in respect to Beverley Street, If you remember, they bought a site over on Beverley in behind where they were going to put a power station and they were going to take down some homes, Their mind was subsequently disabused of that notion but for a while I had acted for them in respect to that matter, and again I had an opportunity to have consultation and experience with them and they with me. That's really the one thing.

The second thing was, I think this may have been the motivating force, Milan Nastich and I had got to know each other ~~between~~ the two episodes that I have mentioned over a period of years, and we had always been promising each other that we would go out to lunch, and somewhere in July, early July, of 1971 we did have a lunch and in ~~that~~ the course of that lunch, he started to play up against me the very thing that you are coming on to now, tenders versus proposals.

Mr. Renwick: Seventy-two?

Mr. McCallum: I'm sorry, it would be seventy-two. You are quite right. ~~It~~ It was about two weeks after that that Henry Sissons called and said - maybe it wasn't two weeks, do you want me to tell you exactly when it was?

Mr. Renwick: No. No.

Mr. McCallum: It really doesn't matter except it happened and I think that was probably the last push of the coin that he must have gone back ~~to~~ and said ⁶⁴Maybe we should

Sep. 4/73
3.45-3.50 pm
V.H.

(Mr. McCallum)

get Jim McCallum to give us a hand?" Its² the only thing I can think of.

Mr. Renwick: Now, forgetting all of the persons or personalities which have been involved in this problem, one thing that came through to me from a comment which you made when you were here on Thursday last was this hang-up that people have as to whether or not calling for tenders is an appropriate method of making a choice when there is a proposal being asked for, and ~~and~~ you specifically referred to the Toronto Star building and the fact that it had been a specific selection of a specific developer for specific reasons and that there was no call for other tenders nor did that company feel obligated to do so. Now, of course, that's relatively a private institution, the Toronto Star. There seems to be very little question that Hydro traditionally in the normal way has called for tenders, but I take it that this is the first proposal in the ~~the~~ development sense that they have been involved in, and I wanted to ask from your background and knowledge whether or not you think that a public body—I speak not only of Hydro but, say, a large public corporation with outside shareholders apart from the governmental involvement of Hydro, whether or not good sense and judgement would recommend^a call in Metropolitan ~~the~~ Toronto for proposals on a project such as the head office, ~~as~~ whether the management and the government² body could make an assessment and make a selection on their own judgement of a single developer, and if the judgement could be sustained that ~~then~~ that would be a valid judgement.

Mr. McCallum: I believe that it is possible to do, but I think for public bodies which are politically oriented as opposed to public bodies ~~which~~ which I think are not so closely politically oriented, even though it is possible to do I think there is a practical problem. Its² almost impossible to demonstrate that you have taken the right one and it certainly is

H-2050-follows

H-2050-1

(Mr. McCallum)

~~almost impossible to demonstrate that you have taken the right one.~~

And it certainly is ^{||} and this is the advantage of the hindsight I have had with you this summer ^{||} I don't think it is possible to clearly demonstrate that you have chosen the right one and that ^{||} you have then got the best deal. ~~and~~ If I had to give advice to people like Hydro in the future, with all the advantages that I think I see in proposals ^{||} and no ^{||} the least of which is that I still believe that the expertise of these builders, when properly employed, and then properly worked on by the person who selects them, can give you a cheaper deal than a public ~~body~~ can get going by way of tender ^{||} I wouldn't tell them to go by proposals again; ~~I~~ I would tell them to go by way of tender.

This is a very salutary experience, and certainly will form a part of my experience, and hence advice, if it is ever called on again. And if that ever helps you at all under these circumstances, I wouldn't advise going that way. Even though I think they might get it cheaper. I think it would be better to be able to demonstrate that you have put everything up there, and I would want to take the lowest tender, too, if I could.

Mr. Renwick: But on the middle ground, assuming as I do that there is validity in the proposal method,

Mr. McCallum: Yes.

Mr. Renwick: Because of the creativity or imaginative content that can go into a project, ~~let~~

Mr. McCallum: That is right.

Mr. Renwick: Let me use ^{as} a specific example, the grave danger of this debate that has gone on in Ontario Housing Corporation, for example.

Mr. McCallum: Yes.

Mr. Renwick: Now there is a great deal ~~to~~ to be said for getting away from a standardized approach to something called public housing for many, many reasons.

Mr. McCallum: There sure is.

H02050-2

Mr. Renwick: And that ^{the} call for proposals allowed some form of imaginative content in this whole field of multiple housing accommodation. And whatever the argument, and however one comes down on it, one can say that the proposal call makes sense. Now Ontario Housing calls ~~for~~ proposals from a group, and they make a selection and go ahead with a particular project. Now in the case of Hydro ~~and~~ (and this is no way second guessing, or trying to second guess what did, in fact, transpire) I take it that if a public body, whether it is government-oriented, or whether it is publicly-oriented in the sense of having substantial public investment in it, ~~were~~ were going to go ahead with a project like this, ^{would} I take it from your answer that if they were going to go the proposal route you would still ask them to call for proposals on a relatively firm statement of specifications of what they wanted; and then to make, their judgements amongst those that made the submissions, rather than to go the more careful, cautious route of calling for tenders in the traditional sense?

Mr. McCallum: I think I would. I'll tell you why. This particular transaction involved two aspects. One was the simple construction of a building, which lends itself to tendering very easily. The other is a partnership to provide maintenance over a long period of time, and that is something that depends very much on the individual, or the company. Let me stay away from present people entirely. For instance, Yolles and Rotenberg; a first-class reputation. I have been their ~~tenant~~ ^{tenant}. I haven't been now for the last five years, but I was their tenant for some 20 years. So that would condition me to saying 'Would they be good for me to do business with in the sense of their being the janitors and providing the janitorial service? Their providing the maintenance?' You bet. There are those people, and I won't mention others, but there are others, that I wouldn't have that same confidence in at all.

Now, since this was a marriage of those two aspects of the deal it is very hard to ~~call~~ ^{call} and the ~~call~~ ^{call} gives you a dollar value. ~~But the dollars don't speak of the very important part of the partnership which is the provision of...~~

B-2051-1 follows

H-2051-1

(Mr. McCallum)

~~and the call price you a dollar value.~~ But the dollars don't speak of the very important part of the partnership, which is the provision of the maintenance and the janitorial service ~~at~~ over a period of time. And that same thing applies to a lesser degree, but does ~~approximately~~ apply, in the proposal calls, if you will, by OHC. Because, oftentimes, when OHC ask for ~~a~~ calls, they want not only the construction of the building, but in addition to that, they want you to manage the ~~a~~ building. The story that I have often heard said was that they were trying to get out of the ~~business~~ business of being the biggest landlord in the province. Therefore, they were looking^{ing} for people who would be able to manage those apartment buildings. Well, that is a much more difficult job than managing an office building, and the people that you enrust with the ~~at~~ job of ~~—~~ if you really are looking for someone to manage those ~~apartments~~ apartment buildings, where people who have not been able, through one means or another, to find means enough to ~~live~~ live in other accommodation, are going to live there, they have all kinds of problems, as all tenants do, ^{and} it takes great humanity to be able to manage successfully that type of accommodation. And you would not want some men who are so rapacious being the ~~managers~~ managers, and ~~apartment buildings~~ their price might be very good, but you would ^{not} like them, and you wouldn't, therefore, take them. And it is that thing, I think, that I am trying to get across to you, that there is something more than just dollars and cents involved when you are looking at this combination of results that you want.

Mr. Benwick : Apart altogether from that long-term association ~~association~~ ~~—~~ would let me phrase it this way ~~—~~ would it not be possible for a judgement to be exercised to select amongst a number of proposals that have been submitted on the same ~~the~~ basic information, not only with respect to cost, but then to make qualitative determinations amongst them with respect

Sept. 4/73
3.55-4.00p.m.
B.A.

(Mr. Renwick)

to quality of the building, the design of the building, the
~~and~~ aesthetic appreciation of the building, those elements.

Mr. McCallum: Yes, I do believe you could do that sort of thing, but there is a difficulty, as you will appreciate. The essence of going ahead by this proposal system is one of going ahead when you haven't got your plans completed, and you don't intend to complete them, ~~because~~ because you want the expertise of the entrepreneur applied to the product, so you don't ask them all to submit their plans, and then pick one. And you must remember, since you are in limbo, as it were, it always has seemed to me that you are therefore putting more weight on the selection of a person—I don't mean to say the person, but I think you know what I mean. There becomes a more individual selection process, because that is what you are trying to get here, Mr. RENwick. You are trying to get that expertise, and when you go to deal with these people, the big difference, as I have always understood it between the tenders and the proposals, is that in the tender system two things happen. First of all, you lay out ~~of~~ all your plans in great detail from some architect you have hired who knows he is going to get paid for the production of the plans, and he also knows he is dealing with an owner who, like most owners, whether they are ~~like~~ of houses or of apartment buildings, experience demonstrates they are very house proud, and if you are a big corporation and you are ~~running your own plans~~, in my experience, and I am sure you will find most architects will agree with me, they will always opt for the ^{more} expensive of two alternatives when it comes up. That is just built into their plans. Then, during the course of construction as they are going to build, if the question comes up whether ~~to~~ to use this quality of cladding or that quality of cladding, all you have to do is to suggest to them, [“]this is really much better. That is the sort of thing your company should have.” Almost invariably, that is what

Sept. 4/ 78
3.55-4.00p.m.
B.A.

(Mr. McCallum)

they will do^{it}. That is not the technique of the build^{er}~~ing~~ the entrepreneur, who is in this business and is successful. He wants to keep costs down; he and his forces spend a lifetime trying to ~~do~~ find the cheapest way of putting out the best product on the market, and ^{they}~~they~~ will make harder decisions every time than an owner will. I ~~think~~ think that is why businessmen have detected they can make a better deal through calling on the expertise of those who do nothing else but that, and keeping their architects, their presidents, ^{and} their vice-presidents, from making the more expensive choice each time of every quality. They get better buildings.

(Tape H-2052 follows)

(Mr. McCallum)

~~the more expensive choice each time of every quality. They get better buildings.~~ They get the same utility, I guess is the word I'm ^(seeking) ~~seeking~~, and that's why I think there has come such a movement toward proposals.

Mr. Renwick: Then I think I can draw this part of my questioning to a close, because I ^(took it) ~~think~~ that there's an inherent contradiction in what you said: That while for certain bodies this would be the intelligent approach, ~~that~~ for other reasons, government-oriented bodies should not ~~use~~ use that approach.

Mr. Genest: (Inaudible)

Mr. McCallum: That is my - Do you hear that from behind? Well, I agree with it. That is my political judgement; looking now back over this long summer, ^(I'm) ~~and~~ saying to you, I don't think I would recommend to a politically-oriented body, going the proposal route because I see, as we sit here, the grave difficulty of demonstrating that's the best deal, if you will. Now, if you were ^(able) ~~able~~ to show five ^(tenders) ~~tenders~~ to exact specifications, if there were five apples being judged, and you had either chosen the low tender or alternatively you took another one, you'd have reasons for it; how much simpler! Perhaps this would never have happened, and I suppose that's been teaching me a lesson as I've been sitting here all summer.

Mr. Renwick: Then the ultimate conclusion is that government-oriented bodies shouldn't have the benefit of the entrepreneurial talent that ~~has~~ has come about through the ^(development) ~~development~~ proposal deal.

Sept. 4/73

4 - 4:05 pm

C.B.

Mr. McCallum: They should have; I just don't know how you best do it. I've never really spent that much time. They should have it. It's a crime that if you can't build ~~buildings~~ buildings, other than many buildings not so very far from where we are sitting, that are built by way of the tender system to specifications that were detailed in full ahead of time and any time you wanted to change, it constituted a change and they come ~~expensively~~ expensively.

Mr. Renwick: Let me perhaps just try to make ^{my} ~~terminations~~ on this come through. One of the points that concerns me, let me see how I can express this: Assuming if I may ~~that there was~~ ~~a~~ that Mr. Moog had ^{or} ~~Canada Square~~ had a preference in the course of this ~~and~~ I'm not being argumentative about this ~~a~~ preference in this, ~~and~~ then I get concerned as to what I should read into the fact that at some point it was decided to call for other proposals, ~~and~~ there's been a sensation throughout this that that proposal call was artificial and unreal and was in the nature of a justification for a ultimate selection of ~~in-the-name~~ Canada Square, and believe me I'm not reading anything into this.

I wonder if that came ~~and~~ I'm wondering out loud ~~I~~ wonder if that came about simply because a body conditioned to the public tender call and its selecting of the lowest bid in the normal course and the traditional tendering system, having gone to this proposal one, felt ~~if~~ if they thought about it, ~~were~~ were saying to themselves "Maybe we really want to ~~x~~ select Canada Square, but we're a public body and there should be some kind of a tender" and they got hung up ~~in~~ in ~~xxxx~~ kind of a hybrid operation.

Mr. Chairman: Mr. Renwick, I don't want to interfere; is that a fair question to be addressed to a legal adviser? Aren't we getting into politics? And that's one of the ~~lines~~

Sept. 4/73

4 - 4:05 pm

C.B.

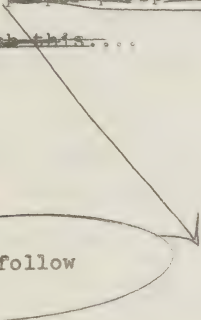
Mr. Renwick: I wasn't trying to; I wasn't treating Mr. McCallum as a legal advisor. However I'll just leave it, as that's my rumination on the record. I think I can probably find my own answer to it.

Mr. Chairman: As you say, Mr. Renwick, Mr. McCallum is an expert in the field.

Mr. Renwick: Yes.

Mr. Chairman: That's why he was chosen by Hydro and it's good to philosophize and discuss these thing with him. But I think it may be an unfair question.

Mr. Renwick: As I was saying, I'm trying to get this thing into proper perspective as to what ^{just} ~~did~~ happen in the way in which this...



H 2053 to follow

Sep. 4/73
4.05-5.10 pm
V.H.

(Mr. Renwick)

and ~~the~~ proper perspective ^{as to} is just what did happen in the way in which this unfolded.

Mr. McCallum: As you might imagine, I had ^{ve} some ideas, but you can see ^{that} from behind I had ^{ve} been told to be quiet and I will take my lawyers' advice.

Mr. Bullbrook: ~~XXXXXX~~ Mr. McCallum should know that the Cabinet of Ontario have been ruminating about this very thing for two years. Not that I have any pipeline in there, but it is obvious ^{they have and} it has caused them great concern.

Mr. Renwick: Now, If I may move to a couple of other things out of the discussion we had on Thursday, do I take it from your experience ~~that~~ with these development proposals that within the range of what one can call normal in development proposals ~~and~~ it would not be normal to call for either a performance bond or penalty clause? Or is that generalization? too broad a ~~generalization~~

Mr. McCallum: Yes, I think it is too broad. I certainly didn't think it was a thing that shouldn't be called for. In fact, I began by calling for it and it was when I was told that you can't have it, ^{age} I suppose the language was politer and longer than that, but that is what it amounted to ^{that} that we tried to find another way of ensuring ^{as} a practical matter that building would be built. You can appreciate that we were dealing with a situation that is different in many respects from the way you generally find performance bonds, in that Hydro were ^{putting} out a nickel really from start to finish and it gave us some leverage ...

Mr. Renwick: Well I am sure we will come back to that point for discussion. ~~My last question is~~ ^A and I am sure we will also come back to the question that Mr. McCallum referred to in his very brief opening remarks about this, I think this was his language, what was in it for Mr. Moog? I am sure ^{that} will come back to that.

Mr. Snibley: That is a topic we are going to get into in depth.

Sep. 4/73
4.05-4.10 pm
V.H.

Mr. Renwick: Fine. My only other formal questions, and my questions this afternoon up to now have been formal ~~questions~~ ^{are:} Was there any question raised as a legal matter about the corporate capacity of Hydro, ~~whether~~ whether they had the statutory or corporate authority to build a head office building?

Mr. McCallum: No. I remember you ~~saying~~ ^{making} that comment, or at least using words that indicated to me that it was in your mind, very early in the days of this enquiry.

Mr Renwick: Yes.

Mr. McCallum: I must tell you that it never entered my mind at that time, and it was never raised by Hydro's lawyers, nor was it ever raised by the other side. I don't remember it ever being referred to, and I don't think it ever entered my mind really until you raised it, and I said to myself, I can even remember making a note, ^{there} maybe something here that indicates that they haven't.

Mr. Renwick: My last point is that you did refer to the legal department of Hydro, ^{but} ~~and~~ I take it ^{that} for practical purposes ~~that you~~ ^{we} retained in this specialist field and that ~~there is no~~ there is no responsibility in the strict sense on the legal department of Hydro with respect to these documents.

Mr. McCallum: ~~None~~ ^{None} that I would cast on them, Mr. Renwick. I have to take the responsibility for what's there, so far as they apply to the work that we did. There is no doubt, as you will see from looking at my files, that in the course of the proceedings, the people in Hydro, the lawyers in Hydro, were looking at the documents and looking at them from a legal point of view, pointing out about matters which came to their attention which they thought weren't sufficient, they were being consulted about insurance, the adequacy of insurance, and the insurance clauses, ^{so} they weren't in any divorced from it. Bill Raney had spoken to me initially but I didn't report to him in the sense

(Mr. McCallum)

that counsel would report to the solicitor retaining him or something. I didn't do it that way.

Mr. Renwick: Thank you. Thank you, Mr. chairman.

Mr. Chairman: Thank you, Mr. Renwick. Any other questions? If not, I think Mr. Shibley would like to get on.

Mr. Shibley: I was remiss in not establishing your expertise, Mr. McCallum. You have been involved in a number of major developments which were created by *the proposal method?*

H-2054 follows

Sept. 4/73
4.10 to 4.15 pm
DT

(Mr. Shibley)

~~proposal method~~

Mr. McCallum: Yes, I have, but most of them had to do with housing, of course.

Mr. Shibley: Yes, but did you not have to do with the Four Seasons?

Mr. McCallum: Yes, I did.

Mr. Shibley: That's the new hotel on Queen Street south of the city hall?

Mr. McCallum: Yes, sir.

Mr. Shibley: So that -- and you do act for a number of major developers?

Mr. McCallum: Yes, I do.

Mr. Shibley: All right, if we could just quickly then complete your review of the formal contract, Mr. McCallum?

Mr. McCallum: Can you help me by reminding me just where we were?

Mr. Shibley: Yes, I can. We had reached ~~paragraph~~ page 25, paragraph 32, and you had ~~and~~ already dealt with the first ~~part~~ portion of it down to the bottom of page 25, ~~and~~ I don't know whether you have anything to add referable to that paragraph?

Mr. McCallum: Thank you. I wonder if I could just explain as I had in my way, only this time I will use the figures, if I can find where I wrote it --

Mr. Shibley: Yes, you had \$1.08 =

Mr. McCallum: Well, this is what I wrote out and it's very short and this is what I was saying to you, only I didn't have the figures to put to it. On the question of the reduction from \$4.92 to \$4.84, ~~and~~ on 1,124,500 square feet of office space, Hydro was to pay \$4.92. That would give you \$5,532,540. On 1,124,500. Now, that's office space, Mr. Allan. I am going to call them by various names for a moment. That's office space. On that, they were to get \$4.92 which was five million five. Then they were to get on 83,500 square feet of commercial space, you will remember, Hydro was to pay \$4.92 and receive \$6.00 which meant they were netting \$1.08 on

Sept. 4/73
4.10 to 4.15 pm
DT

(Mr. McCallum)

83,500, which meant they were getting \$90,180. That meant that they were paying the \$5,532,540 minus the \$90,180, or a net of \$5,442,360 on that same office space of 1,124,500. Therefore they were paying on that office space \$4.84 a foot. That was the dollar rate that I was talking about. There were two classes of space, as you can appreciate. There was office space which was the majority of the building, then there was what they call the commercial space which is the 83,500 square feet and the two of them make up the total aggregate rentable area of the building, sir.

Mr. Chairman: Is there a difference between the bank rate and the regular commercial space?

Mr. McCallum: ~~Yes~~ Yes, but that only has to do with participation, Mr. Chairman. That's nothing to do with what we are talking about here.

Mr. Chairman: ~~Very much~~ Well there were only -- as far as what you are now talking about, there are only the two?

Mr. McCallum: That's right. I was trying to explain how come we were going to pay \$4.84 rather than the \$4.92, if you remember, which was in the initial statement that came from Canada Square.

Mr. Shibley: All right. Would you carry on then, Mr. McCallum?

Mr. Allan: This was on page 23, wasn't it?

Mr. Shibley: Page 25.

Mr. McCallum: I think Mr. Allan is right. It was on 23 that we were talking about and then I referred you, sir, to the figures on page 24, if you remember, as an explanation of how the 83,500 square feet was made up.

Mr. Allan: And you were going to explain the \$40,000.

Mr. McCallum: Well, I had said, you remember, initially that the \$40,000 was a participation. That meant that as Canada Square made money, Hydro was going to make money and how they were going to make it was that in respect to a part of the 83,500 square feet within, 24,000 square feet called the bank space, ~~Hydro were going to get --~~

(H-2055 to follow)

H-2055-1

(Mr. McCallum)

~~24,000 sq. feet called the bank space.~~ Hydro were going to get, over and above the \$6, either \$40,000 if all that space was rented or, if the space was not totally rented, and let's just assume that only a quarter of it would be rented, then Hydro would get, at that point in time, one quarter of \$40,000, or \$10,000, ~~and~~ That, sir, is a participation or fruits that you get once he gets it rented. And if he got a quarter rented ~~then~~ ^{you'd} get \$10,000, or that portion of it. If he had it half rented you'd get half of \$40,000. If he had three-quarters rented, and until he had it all rented, whereupon you would get \$40,000.

Mr. Allan: Is this exempted from the 50 per cent?

Mr. McCallum: Yes sir. That is a part... You see the commercial space - you have to think of the commercial space as being divided into two segments. One is what has been referred to as the bank space which is 24,000 ^{ft} out of the 83,500 and the other is the balance of the space which I just always called the commercial space. That is where the participation was 50 per cent, after the Canada Square people had received their \$6 a foot.

Where was I?

Mr. Shibley: Page 25, I think you had finished down to the bottom of that page.

Mr. McCallum: I think so. Now on page 26 it seems to me that the only thing there that would be important are the last three ~~lines~~ ^{first} of that ~~last~~ paragraph where it reads:

"The building lease shall be executed and delivered by Ontario Hydro and Canada Square contemporaneously with the execution and delivery of the Net Lease."

~~And~~ I guess I could just point out to you there that all three leases, therefore, are really going to be executed and delivered at the same time. Next, it was a rather long paragraph that really just deals with what happens if Ontario Hydro go into possession before the building is completed, and ~~that~~ I don't know that that just would be self explanatory.

Mr. Shibley: Yes.

H-2055-2

Mr. McCallum: And it simply says that if they do that sort of thing they will pay rental for any portion that they occupy and gives the date upon which they will do it.

I don't think that is important.

I think really that part that you will be most interested in is over on page 28, paragraph 34.

I would like to read you this so that you can appreciate the significance of it. It says;

"As provided in the Ground Lease and the Net Lease and subject to the terms and conditions thereof, at the expiration of the term of the Net Lease:

(a) the Ground Lease shall terminate, and all of Canada Square's interest in the Building and site shall be extinguished."

Now, I read that as saying simply this; when the first mortgage has been paid off by Hydro, and it is bound to be, ~~because~~ because we are controlling those monies, all of Canada Square's interest in the building and the site ~~automatically belongs to Hydro~~ automatically belongs to Hydro. It just falls in. It becomes Hydro's according to that clause.

Now there is a second clause which follows, which is paragraph (b), that might make you think that that is somewhat inconsistent with what I have said, which goes on and says, in effect;

"at the expiration of the term of the Net Lease:

(b) Canada Square shall sell, assign, transfer and convey, ^(and clear) free of all liens, charges or other encumbrances, to Ontario Hydro all of Canada Square's interest in the Building and site for the sum of \$1.00."

It is my opinion, and has been throughout, that that option, as it were, to buy at \$1.00 is nothing. Hydro gets this property back just on the flux of time, and on the payment off of the mortgage. I have said, and that option for \$1.00 isn't needed. And in the course, as Mr. Shibley will, I am sure, bring out later on, of the discussions between the lawyers for Canada and Square and Hydro, I think there was this argument that they should put in the option.

H-2056-1 follows

Sep. 4/73
4.20-4.25 pm
V.H.

(Mr. McCallum)

~~lawyers for Canada Square and Hydro I think there was this~~
~~argument that they should put in this option.~~ ^{They} wanted
to have an option in there. We said that they didn't have to
have the option, that it was going to be ours in any event,
and I ~~was~~ didn't want it any other way, I didn't want us to
have to do anything to have to get that land and building
back. Not even pay a dollar for fear that they said, no, we
hadn't done other things and they wouldn't give it to us.
I was able to hold my position, ^{and says} yes, we are to have it in any
event, ^{A.} that's the reason for paragraph ~~that~~

Mr. Shibley: Well, Mr. McCallum ...

Mr. McCallum: ^{then} They ~~said~~ said, well, we want ~~some~~
^{not} help on the other. Do you want me to go into that now or ...

Mr. Shibley: No, no. ~~I think~~ I think you may
have given the committee a misconception, however. You said
once the mortgage was paid off ...

Mr. McCallum: ^{ll} Well, you see, you can't ...

Mr. Shibley: ... and the wording is "at the expiration
of the term of the net lease" ...

Mr. McCallum: I know, but you can't ...

Mr. Shibley: ... and I would think I am ~~am~~ directing
your mind now to the ~~a~~ circumstance that Canada Square is
entitled to manage this building for a term of thirty years
at a return to it. In other words, let's ⁷ say that Hydro tomorrow
^{rented} ~~leased~~ up \$45 million and paid off the mortgage with the consent
of the lending institution, that would not relieve Hydro of all
its commitments to Canada Square.

Mr. McCallum: No. That's why it says "the net lease."

~~All I am saying is~~ There isn't any provision, as you can imagine,
for prepayment either. All I am saying is, I was really jumping ^{it}
to make it very simple, ^{the} net lease can't be terminated until the
first mortgage ~~is~~ has been paid off. That's ² all I was doing. In
other words I was making it clear to you that when we get it,
we get it free and clear of any encumbrance.

-Sep. 4/73
4.20-4.25 pm
V.H.

Mr. Shibley: All right. Okay.

Mr. Gaunt: Mr. Chairman, may I ask Mr. Shibley if this ~~is~~ would be the appropriate point to raise the matter I raised before about the \$3.35. Apparently I had a misconception.

Mr. Shibley: No. I would rather you left that because I am going to be taking Mr. McCallum through this question of a computation of figures, ~~that reports~~ ^{etcetera}. He made ~~some~~ certain analyses for his own purposes and I'll rather see him just complete the review of the contract and then we will get into that. It looks like tomorrow. I am desperately anxious to get through this document.

McCallum:

Mr. Gaunt: I would just add one thing that you might otherwise forget. One of the things that certainly is important is, ~~that~~ ^{in 1975} let's say the leases start ^{say} thirty years from that is 2005, at 2005, as I ~~see~~ ^{say} for nothing and nothing else happening, Hydro get their land back ~~as~~ ^{which is} theirs, which will be a very valuable asset. That's ~~fine~~ ^{his}. Investment companies want to get their hands on land so badly. And in addition to that, they will get back a building, hopefully originally built of first quality, ^{it} will only be thirty years old, and they will get that on my say-so for nothing, even on ~~the~~ Canada Square's say-so for a dollar. Don't lose sight of that in making the ~~a~~ judgement here, because it's my judgement and always has been that that building, thirty years from now, will be worth in their dollars just as much as it is costing today if not more. Think about it. Just go back thirty years and see if there isn't a lot to what I say. Thirty years ago is not so long ago in the lives of some of us and ~~when~~ I tell you that 30 years from now ~~that~~ that building will even then be worth \$45 million and we will get it for nothing.

Mr. Bullbrook: Wait a minute, we won't get it for nothing.
~~International Development~~

Mr. McCallum: Well, of course, we've paid for it. I've said we've paid for it. We ^{then} ~~will~~ have a building worth, starting then \$45 million and land worth heaven knows how much, ^{house of it's} ~~for this location~~.

Sep. 4/73
4.20-4.25 pm
V.H.

Mr. Bullbrook: But your expenditure for mortgage financing alone is going to be well over \$50 million.

Mr. McCallum: Well, look, I know exactly what I am going to do. I am going to be paying interest at eight per cent....

Mr. Bullbrook: That's a two-way street.

Mr. McCallum: Of course it is. But the asset that I then have is worth a great deal more than I have paid for it.

Mr. Bullbrook: Yes but ...

Mr. Chairman: Gentlemen, we are getting ...

Mr. W. Hodgson: And you have saved \$2.4 million in rent in other buildings in the meantime.

~~Mr. Bullbrook:~~ Well, apart from that. Apart from that.)

Mr. McCallum: What I was trying to do was to indicate because it has an impact on ~~the~~ the tax position. I was not trying to make the other point at all.

Mr. W. Hodgson: Per year, too.

Mr. McCallum: On the tax ~~post~~ position of Hydro as against the tax position of Canada Square, it's important to have in your mind, if that ever becomes relevant in your consideration, that the option to acquire a very valuable building is on their say-so for a dollar or in my ~~favor~~ ^{favor} upon doing nothing further. That is the only reason I gave it. I am not ~~an~~ an expert as to the value. I was giving you a value in order that you would have something to equate to this position I am giving you.

MR. Bullbrook: The reason I interjected is, and I am most appreciative of the fact that there is going to be substantial equity position in that building available either due to the ^{exclusion} ~~deduction~~ of time or the assignment for one dollar but I think you will agree that we have

H-2056 follows



Sept. 4/73
4.25 to 4.30 pm
DT

(Mr. Bullbrook)

~~available either due to the effluxion of time or the assignment of~~
~~it but I think you will agree that we have other considerations that~~
govern our judgement when we make it.

Mr. McCallum: Oh, yes, I --

Mr. Bullbrook: One of which, of course, is that --

an appreciation when you talk about taxes as to whether Ontario Hydro should use the vehicle of a separate corporation who has available to themselves depreciation, write-offs and other things that Hydro doesn't normally have, and that in point of fact, Ontario Hydro might well be construed as using this type of vehicle and the tax advantages available to Canada Square in a less than meritorious fashion.

Mr. McCallum: Well, that, sir, hadn't ^{entered} ~~mentioned~~ my consideration. I wasn't thinking --

Mr. Chairman: Gentlemen, let's get on ^{we're} ~~going~~ dealing in philosophies again, I think we can leave that for later on.

Mr. McCallum: I think we can wrap it up pretty quickly now. Paragraph 35 (a) on page 29 simply says, "Canada Square shall take all action to obtain a building permit," Well, that's been done. "They shall take all action to conclude an agreement with the TTC about the station." I really don't know where that's at. You will have to find out from the Hydro people but that's all that says. Over on page 30, they speak about parking facilities and what they are saying is, you have to put 12 parking spaces inside the building and the rest of the parking spaces that are required will be located in Hydro's garage over behind. You know, over on the street lying immediately to the west there is a large Hydro parking garage and other parking that's required in respect to this building will use that.

Mr. Bullbrook: ^{Has} the number of directors under the new corporation affected the thinking as to the 12 ^{chauffeur} ~~chauffered~~ cars? No, I am just interested.

Mr. McCallum: I don't know.

Mr. Bullbrook: How many directors are established under this corporation?

Mr. McCallum: I don't ~~know~~ know.

Sept. 4/73
4.25 to 4.30 pm
DT

Mr. Bullbrook: 12, is it?


Mr. McCallum: Paragraph 37. I suppose if you looked at page 31, I don't think it's very important but I will read it very quickly. It simply says: "No change in the construction of the building or in the improved plan shall be binding ~~on~~ upon either Ontario Hydro or Canada Square unless in writing, including telegrams, and signed or issued by its representative or alternate. Initially, Ontario Hydro's representative and alternate shall be K. H. Candy and H. J. Sissons respectively and Canada Square's representative and alternate shall be G. W. Moog and W. C. Coles respectively. Either party may from time to time change its representative and/or alternate by notice in writing to the other party." Now, there is nothing else on the rest of that page. There is nothing else on page 32 that's important.

Page 33 simply ~~states~~ says that if they are unable to agree on any matter, it will be referred to arbitration. Page 34, ~~the~~ paragraph 42, says that the agreement, "this agreement, and the rights of Canada Square hereunder shall not be assigned without the written consent of Ontario Hydro, which consent may be unreasonably withheld."

Mr. Allan: That's a strong hand.

Mr. McCallum: It's a strong hand, yes.

Well, as you will see, there was a thought and I will just mention it here and it's the end of this agreement as far as I am concerned, there was a thought I think in their minds throughout, sir, that they didn't want to wake up in the morning and be dealing with someone that had been able to acquire Canada Square, and for that reason and also their letter agreements they decided to watch carefully and they insisted that contrary to the usual agreement, where you can make an assignment and the other man shouldn't be able to unreasonably withhold his consent, we argued that we didn't care how reasonable it was, we wanted to know who he was and ~~we~~ have therefore an unreasonable, if you will, right to say -- "No, we just don't like him; we are not going to let you assign that agreement to him."

Mr. Bullbrook: Well, Mr. McCallum, you just made the comment you didn't want to wake up in the morning and find that 

Sept. 4/73
4.25 to 4.30 pm
DT

(Mr. Bullbrook)

anybody had acquired Canada Square. This clause doesn't ~~avoid~~ ^{avoid} that possibility.

Mr. McCallum: Oh, no, but there's another one, sir, you will see.

Mr. Bullbrook: Well, all right.

Mr. McCallum: That's really all there is on the agreement, sir. Do you want to go on to the rest of it?

Mr. Shibley: Well, do you feel that it's necessary for an understanding of the whole transaction?

~~How about the letter agreements?~~ How about the letter agreements?

Mr. McCallum: We are going to get to those in the ^{of your argument,} course I am sure.

Mr. Bullbrook: Do I understand you correctly, in connection with page 31, paragraph 37, that any changes in connection with your plans will be binding if they are signed by Mr. Candy and Mr. Moog?

Mr. McCallum: No, that's not so.

Mr. Bullbrook: Explain that to me.

Mr. McCallum: It's the negative. It simply says that you can't make a change unless they agree but it doesn't say that you can make a change if they do agree. Obviously changes in the, so far as Hydro are concerned, Mr. Candy ~~has~~

(H-2058 to follow)

Sept. 4/73

4:30-4:35 pm

C.B.

(Mr. McCallum)

~~changed in the so far as Hydro is concerned, Mr. Gendy has~~
to get instructions to do that on his own hook; he hasn't been
authorized to incur any expenses by Hydro under this agreement
or anything else.

Mr. Shibley: Now, Mr. McCallum, members of the committee,
what I've done over the weekend is to make a selection of documents
from the various files that Mr. McCallum produced to me of those
documents that I want to examine upon. I intend to introduce
the brief of selected documents as the next exhibit. But I've
asked the chairman to handle this in this way, because there is
no way we are going to complete our review of all these documents
this afternoon and yet because it's convenient I want the brief
of documents disseminated to members of the committee now. ~~That~~
~~We~~ will publish, of course, every document in the exhibit to the
press but only as it is dealt with on an individual basis.

I've asked the chairman further that there be confidentiality
maintained by all members of the committee pending the review
of each of these documents as a matter of testimony by Mr.
McCallum. I think he feels strongly about this and I concur
in it that these documents ~~are~~ ought not be made the subject
of public comment or published comment, until he has had a
chance to deal with them in his evidence before the committee.

So ~~it~~ with that ~~being~~.

Mr. Chairman: I agreed to that when Mr. Shibley discussed
it with me earlier. ~~Is~~ ^{Are} there any objections to it? In other
words for the convenience of the members of the committee these
documents have been bound together in one brief.

Mr. W. Hodgson: What do we do, ~~hand~~ ^(turn) them back into
you tonight?

Mr. Chairman: No, you hang on to them, or leave them
here, ~~but~~ leave them here, but just make sure that ~~they~~.

Mr. Shibley: I don't care if the committee members have
them and even study them over the evening if they wish. But I

4:30-4:35pm
C.B.

(Mr. Shibley) think it's important, certainly to Mr. McCallum that he have a chance to make comment on the documents before they are published.

So now as we go through them, as I say, the clerk will hand to the press that portion of this exhibit that has been dealt with.

Mr. Chairman: In other words, the documents on the face of them, may to lead to some wrong conclusion without the explanation that Mr. McCallum wants to go along with them. So this is exhibit number 225 and Mr. Moore will make them available to the press as we come to the individual letters.

Shibley: ~~Mr. McCallum~~ ^{Mr. Shibley} if we can start with the brief of documents. Have you got a copy in front of you?

Mr. McCallum: Yes, I have one you gave me at lunch time.

Mr. Genest: No, that's not the same.

Mr. McCallum: OOps, I've done it again. No sir I don't, I'm told, have the right thing.

Mr. Chairman: You make a better counsel than you do a witness, Mr. McCallum.

Mr. McCallum: I know. I've had a little more experience doing one than another and you do learn from experience.

Mr. Shibley: All right. Now Mr. McCallum, it appears that the first communication with you, other than the luncheon you've mentioned, was late June or early July 1972 and that's the first document wherein, can you just quickly tell us what this is a note of?

Mr. McCallum: Yes, Henry Sissons called me.

Mr. Shibley: Yes.

Sept. 24/73

4:30-4:35pm

C.B.

Mr. McCallum: I can't read this thing, but whenever it was in July; ~~uh~~, that's my secretary ^{that} writing at the top. I think that it was probably on the 7th of July ~~that~~ Henry Sissons called me, and that's simply a note, much abbreviated, of what he said to me.

Mr. Shibley: And it simply says "give him a hand in reducing this to a contract form, ^{pol.} ~~not~~ sensitive ~~but~~ yet must be enforced". Would that mean politically sensitive?


Mr. McCallum: Yes, it does.

Mr. Shibley: "Ken Candy, architect, really handling this."

Mr. McCallum: Yes.

Mr. Shibley: Now did he enlarge upon why it was politically sensitive?

Mr. McCallum: Yes, he explained to me that they had been denied a head office and that he was confident that...



H 2059 to follow

H-2059-1

(Mr. McCallum)

~~that they had been denied a head office, and that they were confident~~
~~that they would be~~, an attempt would be made to deny him a head
office again and that we had to be careful, it was a thing of
some political significance. That is about the way I remember it.

Mr. Shibley: Yes. All right.

Mr. McCallum: Well, you ask and I will ~~an~~ answer, I
guess that is the best way.

Mr. Shibley: Well, going on to the ~~the~~ next two documents,
in the brief, pages two and three, this was material provided for
your ~~the~~ review, and on July 7 you were provided with "a comprehensive
report by our financial people." Can you help me identify that?
Is that an April 10 report?

Mr. McCallum: Yes.

Mr. Shibley: And the next ~~one~~ one would be the June 23
report, filed with the commission.

Mr. McCallum: Well, I am not as good as you are on these
dates. It was in those papers. I guess if you say so I will accept it.

Mr. Shibley: Yes, And the last would be the January ~~24~~ 24
proposal.

_____ on page three, the
three letters referenced there were also provided for your review.

Mr. McCallum: That's right.

Mr. Chairman: May I interject here, Mr. Shibley. Mr.
Moore wants to know when you are prepared to have these released?

Mr. Shibley: As soon as they are referenced.

Mr. Chairman: Just as soon as you have mentioned them?

Mr. Shibley: Yes. Now, then, other than receiving that
~~documentation~~ documentation, did you get any other instruction or
~~for~~ information to work to for your preliminary purposes? At this
point in time?

Mr. McCallum: Not at that point in time, that I can
recall, no sir.

Sept. 4/73
4.35-4.40p.m.
B.A.

Mr. Shibley: All right. Then, can I take it that page four of this brief are your thoughts as they evolved from a review of that documentation?

Mr. McCallum: Well, now, let me look at the original. Do you have the original? Could I just see the original, please?

Mr. Shibley: I might tell you that we have located these documents that are undated. I asked you yesterday if you could double check that, but there are reasons for locating it here. The references to the \$7 million worth of land, and so on, which find their way into the next document, which we know was a meeting of July 11, so we are presuming that this document precedes July 11 and is subsequent to July 7.

Mr. McCallum: All right, sir, I guess that is so.

Mr. Shibley: Then can we review this document with the members of the committee. Would you go down the comments you have got? These are comments for your own purposes, I gather?

Mr. McCallum: YEs, they are. Many of the things, if not most of the things that are in this brochure are for my purposes and they don't ~~attempt~~ attempt to be very accurate as a result. But I will try and ~~say~~

Mr. Shibley: The first thing you start with is \$20 ^{million} Swiss _^ "bad" exchange rates."

Mr. McCallum: YEs, those dots mean, because exchange rate ~~is~~

Mr. Shibley: Yes, and having regard for the fact that Hydro ultimately would ^N up with the risk of exchange rate, but the funding is U.S.

Mr. McCallum: Yes. The first document, when I looked at it, and I looked at Swiss money and I was worried about the exchange rate, it never came to pass so that "bad" really doesn't amount to very much, but you can see how I reacted to it.

Sept. 4/73
4.35-4.40p.m.
B.A.

H-2059-3

Mr. Shibley: Now, the next thing I notice is you are talking \$20 million Swiss and \$15 Canadian for a total of \$35 million. Is there some rationale for your then ~~-----~~

Mr. McCallum: YEs, there was.

Mr. Shibley: In ~~the~~ figures?

Mr. McCallum: In many of these early documents that you will look at of mine, I was, for my purposes, doing no more than using a million ~~xxx~~ square foot building and multiplying it by about \$34.~~00~~ In other words, I wasn't trying to be in any sense precise, I wasn't trying to distinguish between net rentable space, gross rentable space, or any such thing. ~~-----~~

~~-----~~

(Tape H-2060 follows)

Sep. 4/73
4.40-4.5 pm
V.H.

(Mr. McCallum)

~~theory~~ All I was ~~trying to~~ ^{theory} understand the ~~theory~~ of it so at that point I was busy using the figure of ~~million~~ million feet, a little over a million feet, at \$34 a foot and calling it \$35 million.

Mr. Shibley: Then you said, "can't get at 7-3/4 must be over eight?" You meant they couldn't borrow that money at less than eight per cent?

Mr. McCallum: That's me. I am busy ~~saying~~ ^{saying} I don't believe it.

Mr. Shibley: ~~The~~ ⁶⁰ rate must be over \$5; is that \$5.25 a guaranteed price?" Is that what that is, guaranteed?

Mr. McCallum: Yes, that's right.

Mr. Shibley: You were relating here to the range of rates in Canada Square's proposal of \$4.92 to \$5.25 depending on the cost of money.

Mr. McCallum: Yes.

Mr. Shibley: And I gather you were concerning yourself about the fact that they could, under their proposal, range as high as five and quarter, ~~a~~ or might be entitled to, is that correct?

Mr. McCallum: Yes. And I thought at that time were going to. The way I was ...

Mr. Shibley: In fact, you continued to think that for some time after?

Mr. McCallum: Probably did.

Mr. Shibley: Yes.

Mr. McCallum: I started there.

Mr. Shibley: The point I am getting at, Mr. McCallum, is that the proposal which was accepted by ~~the~~ Hydro permitted a range of rentals from \$4.92 to ~~XXXXXX~~ \$5.25, isn't that so?

Mr. McCallum: Yes sir, it did and it depended, as I recall, on — I don't have it in front of me, Pierre will be after me again if I mistate this — but I think it depended on

Sep. 4/73
4.40-4.445 pm
V.H.

(Mr. McCallum)

the price of money ...

Mr. Shibley: The price? That's right.

Mr. McCallum: ... and what I was busy doing was saying, "they can't get it at \$4.92, my guess is they will have to make this \$5.25?"

Mr. Shibley: Yes.

Mr. McCallum: In fact, they had said to me they were going to take Moog, and I was saying, "It's going to cost them \$5.25 and I wonder if that's guaranteed?" That's what's behind my thinking there.

Mr. Shibley: Whereas the other developers had made submissions at one price, but Canada Square had a range from \$4.92 to \$5.25.

Genest: ~~Mr. Shibley~~ ^{n't} Mr. Shibley, was there ~~any~~ evidence though that Canada Square had verbally informed Hydro?

Mr. Shibley: Later on.

Mr. Genest: No. No. In April, that they were firm on their \$4.92. I think there is an exhibit to that effect. Conversation I think with Mr. Mink.

Mr. Shibley: Well, I think we will wait upon some of the other documents in here.

Mr. McCallum: Well, in any event, at that point when I was looking at the papers it looked to me like ~~the~~ \$5.25 was involved, and as to your comment about the other people, I had not paid attention to that aspect of the matter at all because I was under instructions that Moog was it. I was therefore not paying attention to what others had put in at all.

Mr. Shibley: Well, then, skipping the next item ^{to} zoning, "Hydro puts up building, equity of \$7 million, what do you get for it? Is it enough? How are you protected? Why do you amortize \$7 million over 50 years when you get it back in 30? ~~Rule~~ Rule of thumb is rent from commercial space equals value ^{of} land. Commercial rent should have percentage, like Moog will charge something."

Sep. 4/73
4.40-4.45 pm
V.H.

Mr. McCallum: "His tenants."

Mr. Shibley: You were concerned about the fact that Hydro was putting up the land having a value of \$7 million, *and* that this was really the equity in the building. Is that correct?

Mr. McCallum: At that point, I had that in my mind, yes.

Mr. Shibley: I would like to go to the next document on page five of the brief, and I might tell you from diaries, Mr. McCallum, we established the date of this meeting as being July 11, 1972. Perhaps members as we go through these might want to put dates on them once they are established, but there was a meeting ^{of} ~~with~~ Henry Sissons, Ken Candy, Mr. Dean and Frank Mink, with you on July 11, and I am taking it that this is a document of notes compiled at that meeting. Would you like to go through it with us please? It starts off: "Moog is man", what's that about?

Mr. McCallum: Well, that was an expression of mine to indicate he was the white-haired boy, he was the selected person.

Mr. Shibley: I see.

Mr. McCallum: We weren't, in other words, although I had looked at ~~that~~ that ~~was~~ April 10 report and realized that others had put in evaluations, we weren't to be involved in any consideration of the others.

Mr. Shibley: Yes. So that no matter what assessment you made of the ...

Mr. Bullbrook: Excuse me. Do I understand that those were instructions he received? These are impressions he received from the discussions he had had with those present at that meeting?

Mr. McCallum: I don't think anybody said to me "MOOG is the man". I am sure, it isn't. That's McCallum shorthand.

~~Mr. Bullbrook: No. No. Right.~~

~~Mr. McCallum: I think that ...~~

H02061-1

~~Mr. McCallum: I don't think that anybody said to me "Moog is the man". I am sure it isn't. That is typical McCallum shorthand.~~

Mr. Bullbrook: No, no. ~~Re~~ Right.

Mr. McCallum: But I think we were to consider the Canada Square proposal, and I was to help produce the Canada Square proposal into writing; ^{it is} ~~is~~ certainly the instruction I received. And that is my way of saying that is what you are supposed to be doing.

Mr. Shibley: In other words, Mr. McCallum, no matter what assessment you made, and advice you were giving, it wasn't directed to a selection of Canada Square as opposed to other developers, but rather was directed to whether they were getting their money's worth, so to ~~speak~~, with Canada Square?

Mr. McCallum: Yes, because I never had made available to me those other proposals, you can appreciate. I hadn't seen them.

Mr. Bullbrook: Now this is July 11; is that correct?

Mr. Shibley: That is correct.

Mr. Bullbrook: ~~Were~~ you familiar at that time with the fact that a presentation had ~~not~~ ^{yet} been given to the commission in connection with Moog?

Mr. Genest: That is not right, Mr. Bullbrook.

Mr. Bullbrook: All right, correct me on that, Mr. Genest.

Mr. Genest: Well, ^a presentation was made on June 29 and the commission then decided they wanted more information because of comments by Mr. Nastich; and the official decision was finally made on July 19. The first presentation was made on June 29 which contained a recommendation to contract with Canada Square.

Mr. Bullbrook: ~~Were~~ you familiar on July 11 with the fact that the commission had ~~made~~ ^{not} up their mind?

Mr. McCallum: Yes. I knew ~~that~~ ^{not} that the commission had not made up their mind, but I am not just sure that I know what you have got in your mind. Are you saying that they hadn't made up their mind to select Moog? Is that what you are saying?

Mr. Bullbrook: I want to know, frankly, the flavour of your meeting. You have got Moog as the man, and I don't for a moment think that somebody told you Moog is the man. I realize this is your type of shorthand. But were you familiar, as solicitor for the

H-2061-2

(Mr. Bullbrook)

commission, with the fact that the commission had not made an ultimate decision in connection with the selection of the developer?

Mr. McCallum: I guess I was, although I can't think that I am precise about it. I guess I would be.

Mr. Bullbrook: Then I take it that it is only reasonable to assume, having regard to the fact that you had personal knowledge that no decision had been made by the commission, that the senior administration, or at least those people ~~xx~~ with whom you were meeting on July 11, were conveying to you that Moog will be the man?

Mr. McCallum: Oh, yes, if you will take a look at some of the documents that they gave me you will notice in the letter of July 7, the second document that Henry Sissons sent to me is the summary position placed before the commission. I don't have that here, Mr. Shibley, but that is the one that says "accept Canada Square".

Mr. Shibley: It is in the exhibits.

Mr. Bullbrook: I'm sorry. I regard ~~this~~ as an extremely important memorandum frankly, because one of the considerations I want to make is what the commission did. Because if you will recall at one time I had made the comment to Mr. Gathercole, by way of inquiry, whether in effect the commission weren't a rubber stamp with respect to these matters. And as I read this, Mr. McCallum, I come to the conclusion that you, being privy to the fact that the commission hadn't made a firm decision, you, in your type of shorthand, came to the conclusion that Moog was going to be the man and that those people who conveyed that to you were those people who were present at that meeting, namely, Mr. Sissons, Mr. Candy, Mr. Dean and Mr. Mink.

Mr. Genest: They expected him to be the man.

Mr. McCallum: There is no doubt that they certainly,

Mr. Bullbrook: And I hear Mr. Genest, I think it is, whispering "They expected him to be the man". I don't read it that way.

Mr. McCallum: That is hardly a whisper.

Mr. Bullbrook: I want Mr. Genest, and I want the chairman, and everybody else to realize that I don't read this that Moog

H-2061-3

(Mr. Bullbrook)

is expected to be the man. On July 11, the solicitor, notwithstanding his knowledge of the fact that the commission hadn't made up their mind, makes a note saying "Moog is the man". I interpret this, Mr. Chairman, and I put it to him as a question, that these people had made up their mind that Moog was going to be the man. There was no doubt about that.

Mr. McCallum: Well, I don't know that that is fair, Mr. Bullbrook, if I must reply to that. Look, they placed in front of me, if you will look at the documents, and we don't have them here, first of all they gave me only one proposal; that was Canada Square's.

Mr. Bullbrook: Sure, right.

Mr. McCallum: Secondly they gave me that note to the commission which ~~was~~

Mr. Shibley: June 23.

Mr. McCallum: Yes, I'm trying to find it.

Mr. Bullbrook: Which recommended a contract with Canada Square.

Mr. McCallum: That's right. That's the sense of it.

Mr. Bullbrook: Right.

Mr. Shibley: I think what Mr. Bullbrook is getting at is this; You also had the April 10 memorandum of Candy and Mink, did you not?

Mr. McCallum: Oh, yes.

Mr. Shibley: And in that submission, which is very comprehensive, or I should say, in the outline, it did.

H-2062-1 follows

Sept. 4773
4:50-4:55 pm
C.B.

(Mr. Shibley)

~~and in that submission which is very comprehensive or I should say, in the outline, it did~~ outline the proposals of the other three developers.

Mr. McCallum: Yes.

Mr. Shibley: And at this meeting, the whole thrust of the meeting was that you were not to make a comparison of those other three proposals but rather that you should concentrate on the proposal of Canada Square.

Mr. McCallum: That's right.

Mr. Shibley: Because Moog was the man.

Mr. McCallum: That's right, and if I can find, I just have lost it for the moment, here it is. Take a look at the first memorandum I made when Henry Sissons spoke to me. He said, "Sit down, make a quick review and see what we have now desirable. Give him a hand in reducing this to a contract form." He was talking about Canada Square.

Mr. Shibley: Well, was he also talking about Canada Square when he said "it was politically sensitive".

Mr. McCallum: No, the transaction was politically sensitive for the reasons that I've given you.

Mr. Shibley: All right. Can we go back to page 5. Having got the impression that the selection had already been made as far as these people were concerned, would you interpret that for us?

Mr. McCallum: Well, it says this. "Moog said \$4.92 up to \$5.25 in ~~the~~ letter. Moog ^{said} ~~said~~ \$4.92 orally, ~~get~~ proof."

Mr. Shibley: Right.

Mr. McCallum: That's what Mr. Genest was referring to earlier when he indicated that at sometime before I got it, Moog must have said, I assume to Candy, that, "Never mind, it can go up to \$5.25, I'll stay with \$4.92." Apparently he's saying,

Sept. 4/73
4:50-4:55pm
C.B.

(Mr. McCallum)

"You'd better get some proof of that".

Mr. Shibley: Yes, bear in mind that there ^{are} repeated references to a borrowing of \$50 million, up to \$50 million, in the Ames documents that we've looked at.

Mr. McCallum: I didn't know that.

Mr. Shibley: Did this relate to the fact that we were still within the range of \$4.92 to \$5.25 notwithstanding that Mr. Moog had orally said it would be \$4.92?

Mr. McCallum: I really don't know. I didn't hear Ames this morning, I was outside, and I certainly wouldn't have known ^{anything about} that.

Mr. Shibley: There ^{was} ~~was~~ indications that ~~it~~ it was in ^{Moog's} mind with Ames until the latter part of October that he might borrow as much ^{as} \$50 million.

Mr. McCallum: I didn't know that, sir.

Mr. Shibley: Of course that would affect the rate of rental would it not?

Mr. McCallum: I don't know. AT that time, after all, all I'm doing is looking at Mr. Moog's proposal and reading what's in there.

Mr. Shibley: Okay.

Mr. McCallum: It is hard for me now.

Mr. Shibley: All right, we'll go on with th ~~the~~ your own memorandum, Mr. McCallum.

Mr. McCallum: Okay sir. The next thing I have down is "Get his financial statement ~~now~~". The next thing I have is "Rent is subject to foreign exchange, dangerous."

Sept. 4/73

4:50-4:55 pm

C.B.

Mr. Shibley: Just on the financial statement, did you

~~now~~ satisfy yourself as to that?

Mr. McCallum: No, sir, never.

Mr. Shibley: You never did?

Mr. McCallum: Never was ~~able~~ able to.

Mr. Shibley: I see, why not?

Mr. McCallum: I couldn't get Moog to produce his financial

statements.

Mr. Shibley: Yes, you requested them?

Mr. McCallum: Yes sir.

Mr. Shibley: All right, and you have.....

Mr. Bullbrook: Well now, I want to understand this, Really,

I'm sorry to interrupt. But you see I want to make it amply clear that I recognize your position as a solicitor. You just take instructions, right, and advise on the basis of instructions. In connection with the line of questioning that I undertook before, it wasn't that you were in any way affecting the predisposition of the commission.....

Mr. McCallum: Oh no.

Mr. Bullbrook: You're a solicitor, we must understand that.

But did you ask your people to get a financial statement?

Mr. McCallum: Oh yes. I'm sure we'll come back to this.

The answer is, "Yes, I did"; and yes, they tried to get it; and yes, he said, "Well, I won't ~~at~~ give it to you?"

Mr. Bullbrook: Well, ~~and we're to~~ I want details on this; I must say I want details eventually. I want to know the response and the rationale from these Hydro people to their solicitor when he asks them to do things. Do you intend to go into that?

Sept. 4/73
4:50-4:55 pm
C.B.

Mr. Shibley: Well, I think it has become very apparent in the collective thrust of this evidence, Mr. Bullbrook. The point of the matter is that it was through the Ames file again that the information was provided that infact the Canada Square Corporation would wind up being the owner of this building only. Now that's to be supplemented by the evidence of Mr. Moog that they have ~~some~~ equipment and so on. But there was no financial statement....

Mr. Bullbrook: Mr. Chairman, just ~~we~~^{so} we have a meeting of the minds on this, when we get to such things as the financial statements which ~~were~~^{was} not eventually produced, my interest is in seeing ~~another~~ two things. ~~One~~ One, I take it the solicitor ^Sadvised his clients that it should be produced. Then I'd like to have some ~~reasoning~~^{it} reasoning for why ~~wasn't~~ ~~it~~ wasn't ~~it~~

H 2063 to follow

Sept. 4/ 73
4.55-5.00p.m.
B.A.

H-2063-1

(Mr. Bullbrook)

~~My interest is in saying two things. One, I take it the~~
~~spilletter advised his clients that it should be produced, then~~
~~I would like to have some reasoning as to why it wasn't~~ produced
and, in effect, their explanation. BUT it ~~it~~ doesn't have to be
done now.

Mr. Shibley: Mr. McCallum, were you ever given an
explanation as to why Hydra acquiesced in the refusal of Canada
Square?

Mr. McCallum: Well, let me come at it this way. I
tried on several ~~occasi~~ occasions, as will become apparent as
we go through some of these other documents, to get at Canada
Square's financial abilities, for a variety of reasons that will *again*
become perfectly clear. I failed. They just said to me that they
would not make them available. They didn't need themⁿ, and so on.

Mr. Shibley: Would it have been significant to you to
know that this corporation had no assets other than some construction
equipment?

Mr. McCallum: Yes, it would have been significant. I
can't think that it would have changed very much because as soon as
I couldn't get them to give me any financial statements I sure
didn't figure they were worth very much. I acted on that basis
from that point on.

Mr. Shibley: They were using, as it turned¹⁵ out, this
corporation as a vehicle for ~~it~~ doing this transaction.

Mr. McCallum: I have heard that, just as you did, here.
I didn't know until then. But, in any case, to just help Mr.
Bullbrook, if you will look at page 18 of our letter reporting,
paragraph B of page 18 says: "We were not retained to report to
you on the financial ability of Canada Square to carry out its
obligation on the agreement and complete the project *accordingly*.
Since there is no provision in the documents for Canada Square
providing a performance bond, you will undoubtedly want to make

Sept. 4/73
4.55-5.00p.m.
B.A.

(Mr. McCallum)

a judgement as to that company's financial ability." That was what I hoped was a polite way of saying, ^{and} ~~that~~ I enlarged upon ^{it} as I will tell you about when we get there in the evidence, a polite way of saying, "You don't know anything about this if you rely on what I have. You will have to find out."

Mr. Shibley: Yes. That reporting letter, also, in the context that you have read was intended to protect your flank, so to speak, in terms of your responsibilities to your client, in that area.

Mr. McCallum: Yes. But I wasn't so much worried about my flanks; I didn't anticipate this proceeding. I was much more....

Mr. Shibley: No, what I meant was that if it turned out that the lack of financial responsibility, or if there was a lack of financial responsibility and that turned out to be problematical, you were telling Hydro, "Well, that is your responsibility, not mine, because I asked for and you did not arrange for a financial statement

Mr. McCallum: That's right, and when I took that letter in front of the commission and went over every word that is in the letter, and read it all to them and commented on it as we went, I certainly expanded on that at that time.

Mr. Shibley: Yes, I realize. All right, we go on with the document on page 5. You say, "Recalculate so as to see what is in it for Moog, For example..." Now, will you take it from there.

Mr. McCallum: Well, then I have, "(a) Hydro put up \$7 million in land for 30 years for a dollar, Moog mortgaged it, therefore uses it as his equity". Now, as you ~~will~~ ^{can} see, and we will come to, and we mentioned it just briefly, we took some steps to try and prevent that happening, during the course of construction, but that will come out.

(b), I say, "Absolutely no risk for Moog, and no money invested and ~~triple A~~ ^{triple A} covenant on the lease, ~~therefore~~ therefore low rate on \$35 million. Question is, that low rate adequately reflected in rent paid by Hydro".

Sept. 4/73
8 4.55-5.00p.m.
B.A.

Mr. Shibley: "Is that low rate...?"

Mr. McCallum: "Is that low rate adequately reflected in rent paid by Hydro? If Hydro are to be able to defend this deal in future they should now try to equate what is in it for Moog against what he does for Hydro."

Mr. Shibley: Right. So you saw at first blush that there was, as you say, no risk for Moog, no dollar investment, and that he had a triple A covenant, and Hydro was putting up the land as the basic equity?

Mr. McCallum: That's right. Those were the things that I then assumed. They are not the things that I subsequently concluded. They represented, and it is important, I think, in the exposition of ~~these~~ these documents, I was poking every hole in the arrangements that I could...

Mr. Shibley: I understand.

Mr. McCallum: ... because I was having to put this in writing and I wouldn't do my job if I weren't trying to find the places ^{where} ~~that~~ I had to ~~put the holes~~ ^{chink} up the holes, as it were. And that is what I was doing, poking away at it.

Mr. Shibley: I understand that, ~~and that is why~~ ^{is} Mr. McCallum, and I think what Mr. Bullbrook intends, and I ^{is} intend to find out ~~down~~ down the line, when you saw holes and presented those holes to Hydro, for examination, what instruction and reaction did you get? At the moment, I just think....

Mr. Allan: Mr. Chairman, will we find out to whom ~~in~~ in Hydro he presented these?

Mr. Shibley: These are notations to himself, and then you will see later there was a discussion, and memorandum. If you will

~~_____~~
~~_____~~
~~_____~~

Sep. 4/73
5.00-5.05 pm
V.H.

(Mr. Shibley)

just at the moment think of yourself as Jim McCallum back on July 11, having six documents presented to him for examination and making notes and then going to a meeting with these four people from Hydro; I take it ^{that} at this meeting you raised these points with them?

Mr. McCallum: That's right. This is the sort of thing we were ^{busy} discussing. I would raise them and we would have a discussion.

Mr. Shibley: You threw this at Henry Sissons and Ken Candy, John Dean and Frank Mink at this meeting; so you were giving them the benefit of your expertise ~~too~~

Mr. McCallum: And they were giving me theirs, too.

Mr. Shibley: Yes.

Mr. McCallum: This is not just me; we were busy working at it.

Mr. Chairman: Mr. McCallum, who is the senior man in that group? Was it Mr. Sissons?

Mr. McCallum: Yes, sir.

Mr. Chairman: He was the one that originally retained you is that right?

Mr. McCallum: Yes, sir.

Mr. Shibley: All right. Then you go on and say, "Necessary to assume you must pay eight per cent plus" in other words, eight or more ~~for~~ for \$35 million. Is that correct?

Mr. McCallum: That's right.

Mr. Shibley: So you were ^{n't} implying for a minute that he could get his money as cheap as he was representing?

Mr. McCallum: No, I wasn't.

Mr. Shibley: And did you tell these people that?

Mr. McCallum: Yes, I did. I don't think it came as any surprise to them. My memory, it is not all that ~~for~~ great, but my memory is that some of them had already expressed themselves ~~in~~ to the same way. There was an immediate agreement that that didn't seem at all probable.

Sep. 4/73
5.00-5.05 pm
V.H.

Mr. Shibley: The question is whether they in turn relayed it to the Commission.

Mr. McCallum: You'll make that judgement, sir.

Mr. Shibley: Yes. So that it was a concensus you say that, as early as July 11 and prior to the meeting of July 19 at which the committee made a determination, that Moog's money would cost him ~~more than~~ eight per cent or more. Is that right?

Mr. McCallum: That was my view, yes, and I think the others ~~but~~ I won't speak for each and everyone of them but I think they were pretty well agreed to the same thing.

Mr. Bullbrook: We know as a matter of fact that on July 17 Mr. Candy's evaluation of the profit was based on ^{an} eight per cent rate. Six days later.

Mr. Shibley: Well, let us get to that ^{in due} course. "How much does he make," ~~was~~ would you go on from there?

Mr. McCallum: "How much does he make between the assumed eight per cent he pays and what Hydro pays him; therefore take out repayment of principal over 30 years, not 50; set up payments of interest at eight per cent, and then see if he makes money. If so, how much. Henry says if he gets it for less than eight per cent, good for him."

Mr. Shibley: That was Sissons attitude?

Mr. McCallum: That's Henry Sissons', yes. I should say that that can be read two ways. Let me tell you how it should be read. We were talking about the improbability that the money could be borrowed for less than eight per cent. I was pretty emphatic about it ~~but~~ ^{that} in my experience I didn't think it was at all realistic. I don't remember what others agreed with me but it was in the light of what I ^{have} just expressed to you, some unanimity of thought, that there was no real chance that they could get it at less than eight percent, and that Henry made that comment that I have noted.

Mr. Shibley: All right. Would you go on?

Mr. Bullbrook: I want to ask you a question. I am sorry, you are going to be angry with me but you've got to help

me in this respect. Were you privy to the document whereby Hydro had|or was it in being at this time;help me|that Hydro had received a so-called commitment that it was to be in Swiss funds as secured?

Mr. Bullbrook: What was the date that Mr. Candy
out to get this information?

Mr. Bullbrook: July 8?

Mr. Bullbrook: Was there no discussion at this meeting of July 11 that the funding would be Swiss?

Mr. Shibley: I think, though, that you said also that the other people participating in that meeting were of the same view?

Mr. McCallum: Yes, just from memory, and I ~~just~~ guess you would know about it. I think you will find that there was a written memorandum by Frank Mink, it may have been that report of April 10 or something. ~~that was the only one that I have seen~~

Mr. Genest: That's right.

Sep. 4/73
5.00-5.05 pm
V.H.

(~~Mr. McCallum~~ ~~xxxxxxxxxxxx~~ ~~xxxx~~

Mr. McCallum: ~~xxx~~ that in effect says they don't
think he can get his money for less than eight per cent
either ~~and~~ from memory, I don't think in my term with

H-2065 follows

Sept. 4/73
5.05 to 5.10 pm
DT(Mr. McCallum)

~~that in effect says that they don't think he can get his money for less than eight per cent either and, from memory, I don't think in my term with~~ Hydro anybody ever was at all persuaded or was really counting on the fact that Moog could get his money for six and ^(a)half per cent. *When I was there.*

Mr. Shibley: Mr. McCallum, then that made the range of the amount that would be required to be borrowed a matter of some importance then?

Mr. McCallum: Yes,

Mr. Shibley: Yes.

Mr. McCallum: Assuredly.

Mr. Shibley: Yes, so that if we are still in the circumstance throughout that summer that Mr. Moog was expecting to be permitted to borrow anything up to \$50 million ~~and~~ →

Mr. McCallum: Never to me, that I can ever remember, was that figure ~~x~~ mentioned by Moog or by anybody acting for him. That's something you have discovered. Certainly it was not communicated to me and nobody ^(at) ~~and~~ Hydro ever referred to it.

Mr. Shibley: Well, I ~~and~~ →

Mr. R. G. Hodgson: Mr. McCallum, back ~~x~~ here you say 20 million Swiss and 15 million Canadian, and you are saying ~~and~~ →

Mr. McCallum: That makes 35. That's right. That's what I said in the ~~at~~ beginning. I started at 35. At one point I think we got up to -- ~~x~~ when we got more accurate figures ~~and~~ we moved into the 45 million. We never left it. 50 million, I never heard of.

Mr. Shibley: All right. Well, we will go on with the document, if we may.

Mr. McCallum: Well, then, I say "he could make money by charging Hydro \$34 a square foot and building it for less, say, \$30. If building construction costs are low now, Candy must take responsibility for saying how much he makes plus money on maintenance."

Mr. Shibley: Does that mean he can also make money on maintenance?

Mr. McCallum: That is what it means.

Mr. Shibley: Yes, OK, go ahead.

Sept. 4/73
5.05 to 5.10 pm
DT

Mr. McCallum: "He ought to make enough on construction to pay him a building fee. How much ~~x~~ should that be? That must include something for cost and risk of his doing interim financing, for example until the first draws come, and in between when later ~~x~~ draws." At that point I thought that -- it never occurred to me that he was going to only get a completion loan. I thought he was going to get a construction loan.

Mr. Shibley: Yes, all right, carry on.

Mr. McCallum: "He will make money on ground floor, on ~~concourse~~³ commercial space which he rents at \$6 provided he gets more than that for it. That may be a risk, though, that he must take and for which he is entitled to a return."

Mr. Shibley: Right.

Mr. McCallum: On page 8, it says: "Moog doesn't own the building in the end. Others would take less in the interval because they then own the building."

Mr. Shibley: Right.

Mr. McCallum: And then I have some hieroglyphics down. \$4.92, \$35 million, 50 cents equals a half a million dollars a year." Then I say, "But that can be reduced by costs over \$34.00 a square foot and his money costing him over eight per cent."

Mr. Shibley: Now, just stopping there; I gather that you were then making a rough ~~an~~ estimate of his profit as being 50 cents a year. I am talking ~~of~~ his profit on the rental rate equal ~~to~~.

Mr. McCallum: Yes.

Mr. Shibley: ~~to~~ to half a ~~million~~ million because you are talking about a million rentable feet.

Mr. McCallum: I don't know what I was doing but certainly what I think that 50 cents represents -- where I got it, I haven't the vaguest notion at the moment ~~to~~.

Mr. Shibley: All right.

Mr. McCallum: ~~to~~ But what I was doing was really trying to find out what 50 cents meant and, as you can see, if I was using a million feet, I was talking about half a million dollars a year.

Mr. Shibley: All right. Can we go to the next document please, page 9? This is a document dated July 14. Would

Sept. 4/73
5.05 to 5.10
DT

(Mr. Shibley)

you ~~start~~ interpret it for us, please.

Mr. McCallum: It starts off saying ~~that~~^{at} from 10 until 11.30 I was reading in the library as to forms of leases and notes. From 11.30 to 1.45, met here John Dean and Ken Candy; discussed John's new material. ~~But~~ Possible half a million dollars a year, 30 years; no risk; 50 cents a foot difference between rent received from Hydro and cost of amortizing the loan at eight per cent and cost of building at \$34.00 a square foot; or at seven per cent it would equal 79 cents which, in turn, would be three quarters of a million dollars a year. Question, how to justify three ~~quarters~~ quarters of a million dollars a year or half a million dollars a year for 30 years when there is no real risk. ~~And~~ Answer, if the building costs more than \$34.00 a square foot or/and the interest rate is ~~less than, greater~~ greater than eight per cent. Try again on Monday."

Mr. Shibley: Now, just before you leave that, Mr. McCallum, were you specifically instructed to apply your mind to the amount of profit that Mr. Moog was making and the need to justify whatever the terms of this arrangement were?

Mr. McCallum: When you say specifically instructed, Henry Sissons wanted me to have a look, as he said, at what they now ~~had~~ ^{Rose} and I was looking at what they then had ~~to~~

Mr. Shibley: Yes.

Mr. McCallum: ~~Doing~~ exactly that, trying to measure, as I said, what would be in it for Moog against what Hydro had got or had obtained and to that extent I was trying to assist him in this ~~to~~

~~Mr. Shibley: Well, what --~~

(H-2066 to follow)

H02066-1)

~~Mr. McCallum)~~
~~And to that extent I was trying to assist him in this~~

Mr. Shibley: What I am wondering about, Mr. McCallum, is the wording, is how to justify \$3/4 million per year or half a million per year, that is profit, for 30 years, with no real risk, in lieu of language such as, or adopting a mental posture, a negotiating posture, once you have recognized these factors that you have been outlining. I find the wording

Mr. McCallum: Well it may seem strange. All I was saying was in effect, how on earth could Hydro justify giving this kind of money. That is all there was to it. I was wondering out loud, if this were so, how could they justify doing a thing like that.

Mr. Shibley: You know, of course, that there are a number of memoranda which are rationale for what Hydro did. There were many efforts made to justify the transaction with Canada Square. I am wondering whether you had any such similar instruction at this time?

Mr. McCallum: No, ^{I can} absolutely assure you

Mr. Shibley: This was just your own thinking, How do you justify paying that kind of money?

Mr. McCallum: No sir. Never at any time was there ever any suggestion that that was my role.

Mr. Shibley: All right. Okay.

Mr. McCallum: And surely you have read these things. You will see that isn't the role I took either.

Mr. Bullbrook: That there not be any misunderstanding there, I didn't take Mr. Shibley's question to be that part of your retainer was one of justifying the profit.

Mr. McCallum: Oh no, neither did I.

Mr. Bullbrook: All right. That was the response. There are two, this is a year ago, and I recognize your recollection would be as hazy, if not hazier than mine

Mr. McCallum: Worse.

Mr. Bullbrook: All right. There are two things that would lead to this memorandum. That is, your own inherent thought that a question arises as how do you justify \$3/4 million over 30 ^{years.}

H-2066-2

(Mr. Bullbrook)

Or, in the alternative, either Mr. Dean or Mr. Candy said, ^vthere is going to be a question here of justifying this type of profit." I take it from your evidence that ~~ne~~ neither one of those men did say that to you. [?]

Mr. McCallum: That is right. You can take it as said.

Mr. Shibley: Can we go to page 10 then of the brief. This is again July 17. We are still in advance of the commission meeting at which this is going to be all considered. "One and a half hours in the car in a.m.". Can you explain that?

Mr. McCallum: I sure can.

Mr. Shibley: I ~~will~~ ^{will} caution you now. I also note that this document looks to be on a steno pad!

Mr. McCallum: You are absolutely right. The pad, and you will see several reports here. You will see one later on that I took to the commission. I was coming in from the lake. My wife was doing the driving. She is not a steno. I had my own file with me, and I was doing things that I should have done on the weekend. If you will notice the time of year, it was July 17, and I tell you I am very busy sailing at that time of year.

Mr. Shibley: Okay.

Mr. McCallum: And I was coming in from the lake last year.

Mr. Shibley: All right. Well you carry on then. This is your handwriting?

Mr. McCallum: Yes, it is my handwriting. I can't read this one. Wait until I find mine, will you please.

Mr. Shibley: I'll help you with it.

Mr. McCallum: It isn't that I can't read it. I am sorry, sir. It is just that this booklet you have given us... Just a second and I'll get my own and I'll be fine.

"Problem: Moog's profit.

1. What mark up does ~~SAFARI~~ Cadillac make its cost to construct assuming it was constructing a building for Hydro, i.e. there would be a mark-up made by a general contractor - what would it be, ³ because the general contractor would take very little risk and maybe that ¹⁰ minimum return that should go to Moog.

H-2066-3

(Mr. McCallum)

General contractor has to give you an upset price too, therefore same risk - Ask Ruby about Reichmann deal with Star. Ask Herb."

Mr. Shibley: Now just stopping there. What you have got in mind, I gather, is even when you put a job out to tender you can stipulate for an upset price?

Mr. McCallum: Right.

Mr. Shibley: So that the fact that a builder is at risk as to the cost exceeding \$34 a square foot is not something unique. You can put him on risk as with an upset price?

Mr. McCallum: That's right.

Mr. Shibley: All right, carry on.

"Mr. McCallum: "In addition though, Moog must do all his own financing to an upset price expressed in rent over 30 years. In our calculations he can win by getting his money for less than 8 per cent or lose by getting his money at more than 8 per cent..."

H-2067-1 follows



Sept. 4/73

5:15 - 5:20 pm

C.B.

(Mr. McCallum)

~~in our calculations he can win by getting his money for less than 8 per cent or lose by getting his money at more than 8 per cent.~~

Would it be accurate for us to start with a cost to construct of 1/2, 30 plus 40, or \$35 ~~dash~~ a square foot, add ~~build~~ builders fee of 10 per cent, add risk of 10 per cent and I end up with \$42 ¹/₂ and pay rent based on that figure ~~at~~ over 30 years at 8 per cent?

"If builders' fee was 6 per cent, it would be \$2.10. Is there a place we can get a good estimate of amount added by a general contractor, because he gives upset price, takes risk of strikes, prices going up etc, ask Cal Voore. All Moog does is add his risks of financing, etc.

"Rockbottom cost to Hydro must be contractor's price and then in return for X per cent, Hydro get borrowing done by somebody else other than Hydro.

⁴
X) argue Hydro could get this ~~built~~ built by general contractor if his price would include fixed end price and all risk of strikes and price increases during construction, \$40 as per the Real Estate Board is not inclusive of financing cost, therefore Hydro could start here and add interim financing costs which were omitted when allowing extra for Moog's additional risks.

"So if we select \$35 as being between \$30 and \$40, we must add for Moog."

That's the end of that one.

Mr. Shibley: Now then we are on page 14.

Mr. McCallum: Okay, now ⁴/₂

Mr. Shibley: This is your memorandum as for a meeting I believe you had on that day, did you not? Is that correct?

Mr. McCallum: Yes, that's right, sir.

Sept. 4/73
5:15-5:20 pm
C.B.

Mr. Shibley: Yes.

Mr. McCallum: July 17, you are referring to.

Mr. Shibley: All right. Will you carry on with that document, please?

Mr. McCallum: It starts off by my reading the file and refreshing my memory. "Attending at Ken Candy's office with John Dean and Frank" I always forget his name, so I put a question mark.

Mr. Shibley: Mink.

Mr. McCallum: "{and Ken Candy}" from 11:05 when I left home until 3:30, when I got to my office.

"I have the following analysis:

"If Moog is paid a maximum of \$4.92 a foot for rent for 30 years, and if he borrows his money at 8 per cent, and if you deduct \$1.45 for his cost of operating and maintenance over those years; then he is going to receive \$3.47 net per year for 30 years, which at 8 per cent is equal to a cost to construct of \$40 per squ. foot for 1,200,000 square feet."

Mr. Shibley: Now just stop there, so you were working in reverse; you netted out to \$3.47 and said that that ~~would~~ would fund - I'm sorry.

Mr. McCallum: Well, what I was doing,

Mr. Shibley: You said it would net out to \$40 per square foot. So he had enough money going on that basis, ~~to~~ even if the building cost him \$40, to fund it. Is that correct?

Mr. McCallum: That's what I was doing.

Mr. Shibley: Okay, fine.

Mr. McCallum: ~~But~~ you can appreciate that maybe this was a good place to remind all the members of the committee, Mr. ~~Shibley~~ Shibley. You will appreciate that these figures, no matter ~~where~~ where we get to tonight, are only again indicative. You will immediately appreciate, for instance, I wasn't taking into account, because we hadn't then negotiated ~~it~~ the difference between

Sept. 4/73

5:15 - 5:20 pm

C.B.

(Mr. McCallum)

\$4.84 and \$⁴92~~0~~

Mr. Shibley: I understand that.

Mr. McCallum: ~~Answer~~ ^I At this time in my thinking ^I wasn't taking into account a very material difference between the gross rentable area and the gross area and the net area and so on.

Mr. Shibley: I realize. These are your preliminary thoughts.

Mr. ~~Shibley~~ McCallum: Those things were in no way playing any part in my thinking at that ~~man~~ point.

Mr. Allan: Which were you using?

Mr. McCallum: At that time I was just using gross and then it was only a guess as to gross.

Mr. Shibley: Would you carry on?

Mr. McCallum: I started off with a million and I was using a million ^{two} ~~one~~. It would be a ^{great} ~~small~~ mistake if anybody were to accept this or in any sense impute to me that that was a judgement in any sense finalized. I was trying to develop my own thought process and using examples that bore some resemblance, obviously, to the facts or I'd be kidding myself.

Mr. Shibley: And you were communicating your thoughts of that day to Candy, Deane and Mink, is that correct?

Mr. McCallum: That's right.

Mr. Shibley: All right, carry on.

Mr. McCallum: Yes ^(this is) the sort of thing we were talking about. We w~~ere~~ ~~without~~ ^{without =} trying to, and it used to drive John Dean crazy because he has a much more particular mind than I have and my thought processes weren't easy for him to relate to, because I would never use the correct figure, and that ^{didn't} ~~wouldn't~~ please him.

Mr. Shibley: All right.

(would you carry on with your document.

Sept. 4/73

5:15- 5:20 pm
C.B.

(Mr. Shibley)

You are in mid-page.

Mr. McCallum: "Moog says his cost to construct is \$34 per square foot, which I believe includes everything he has to pay for architects and other professional fees. If he wants to repay that \$34 with interest at 8 per cent over 30 years then he would have to pay out ~~\$\$\$~~ \$3 a foot...."

Mr. Shibley: \$3.02.

Mr. McCallum: \$3.02 I'm sorry; " per foot per year as rent."

"In other words he would be receiving from Hydro \$3.47 a foot, and he would be using \$3.02 a foot to retire his cost of construction, assuming he borrowed his money at 8 per cent, which would mean that he would be netting 45 cents a foot.

"His net of 45 cents a foot is made up of two types of profit:

"(1) his fee as a ~~building~~ builder, and

"(2) his remuneration for taking the risk that he can borrow his construction moneys at 8 per cent.

~~In addition to making a net-net return of 45 cents per square foot for the next 30 years on the rent, he will also....~~

H 2068 to follow

Sep. 4/73
5.20-5.25 pm
V.H.

(Mr. McCallum)

In addition to making a ~~net~~^{net} return of 45 cents a square foot for the next 30 years on the ~~the~~ rent, he would of course also make more (possibly) if (a) his cost of construction is less than \$34 a square foot and (b) his cost of borrowing money is less than eight per cent per annum. Hydro can prevent ~~Mr.~~^{Mr.} [Moog] making more by reducing his cost of construction, by making him agree that if his cost of construction, which does not include therein any profit to him, is less than \$34 a square foot, the rent must be reduced proportionately from the rate of \$4.92 a square foot." There you see the genesis of the idea of the ~~formula~~ formula you are going to come to later on.

Mr. Shibley: Right.

Mr. McCallum: "In other words, if ~~Mr.~~^{Mr.} [Moog] can put up a building to the specifications required by Hydro for less than \$34 a square foot, (which is what he says it will cost him,) then he must proportionately reduce the rent to Hydro. In this way, any possible increase in profit arising out of construction cost is prevented. At the same time, of course, if his cost of construction exceeds \$34 a foot, the risk is ~~the~~^{the} solely his, since ~~the~~^{the} rents cannot go above \$4.92 (including maintenance) or \$3.47 if the operating costs and maintenance are deducted, which ~~Mr.~~^{Mr.} says ~~total~~^{total} \$1.45 a square foot. It was suggested that if he can get his money for less than eight per cent then he ought to be entitled to any additional profit that would arise as a result. In analysing his net return of 45 cents a foot on rent, we estimated that the general contractor hired to construct this building for Hydro, would probably add from six per cent to eight per cent of the cost of construction as his fee for building. If we take seven per cent, then the fee would be seven per cent of \$40 million, or 2.8 million, which is equal to 20 cents a foot on rent."

Sep. 4/73
5.20-5.25 pm
V.H.

(Mr. McCallum)

Stopping for a minute, you will see how, Mr. Allan, I was moving from 35 and I now have got it up to where I am talking about 40 in these examples, and neither one ~~was~~ ^{is} very accurate.

"If his net-net return is as above, 45 cents a foot, and if we pay him a normal rate for constructing the building of 20 cents a foot, then he would be making the difference of 25 cents a foot or \$300,000 a year over 30 years for taking what we have called the financial risks, which does not include the risk of foreign exchange. The present value of \$300,000 a year at eight per cent for 30 years is 3.3 million. If his money cost him not eight per cent but seven per cent, then the return attributable to his financial risks would ^{be} not ~~be~~ 25 cents a foot, but 38 cents a foot, or \$456,000 a year, the present value of which would be more than \$5.1 million. It seems to me that if Hydro make Moog promise to reflect a reduced cost of construction less than \$34 a foot in a ~~reduced~~ rent, then they have protected themselves on that heading. It seems to me that Hydro must be prepared to pay any man a reasonable fee for constructing the building, and Mr. Candy suggests that seven per cent of the cost of construction is reasonable under ~~these~~ ^s these circumstances. Finally, a judgement must be made as to whether ^a return of 25 cents a foot, assuming his money costs him eight per cent, is reasonable having regard to the risks he must take. I have suggested that Moog be prepared to assume the risk of foreign exchange in return for this kind of reward and not attempt to pass the foreign exchange risk over to Hydro. The financial risks, to distinguish them from construction risks such as the risk that his cost will exceed \$34 a square foot because of inability to get contracts at the right prices, strikes, etc., might be said to be these: one, possibility that his capital will cost him more than eight per cent; two, inability to increase the rent for 30 years even though the value of the dollar may continually grow smaller."

(Mr. McCallum)

If I can just stop for a moment there, Mr. Shibley, I don't know what you want to do about this, but the one that we talked about, and I see that it isn't here, we talked about it probably more than any other risk, was the one that I never believed that he would be able to get his money for thirty years firm and not have to roll it over at the end of ten years or something. ~~Then~~ and you will find that probably later on, but it is one we discussed and I see it is not in here.

"Even if you assume that he retires his loan at a fixed rate of interest over 30 years, that is \$3.02 a foot, still the worth of his return continually reduces in terms of ~~what~~ what it will ~~purchase~~ purchase. It seems hard to avoid the conclusion as expressed above that unless we can be satisfied that he is to pay more than eight per cent for his money, he is getting too great a return for taking the risk that appears to be involved. Even if Moog will not assume the foreign exchange risk, there appears to be need for ^arenegotiation with respect ~~and~~ to his pure profit of 25 cents a foot."

Mr. Shibley: Just stopping there, Mr. McCallum, did you express that view to the people who were in attendance at that meeting?

Mr. McCallum: Yes.

Mr. Shibley: Namely, that for the risk involved, he appeared to be getting too great a return and that there should be renegotiation with respect to his profit? Did you express that view to them?

Mr. McCallum: Yes. There is no question ^{we talked about that.} ~~and~~

Mr. Shibley: And what was the reaction you got?

Mr. McCallum: I think it was one of agreement. I don't think ...

Mr. Shibley: Do you know of any

Sept. 4/73
5.25-5.30p.m.
B.A.

(Mr. Shibley)

~~Mr. Shibley: I did not know of any effort to renegotiate~~
~~the amount of the rental rate?~~

Mr. McCallum: Well, not any to change it from \$4.92 and then it came to \$4.84, except insofar as those matters that you have become familiar with.

Mr. Shibley: That's my point.

Mr. McCallum: There was no general effort to take that basic price and wipe it out and get a lower one, by itself, except ^{insofar} ~~as~~ as it came about as a result of putting this thing in ^a ~~the~~ contract.

Mr. Shibley: Well, forgetting the set-off, because that is a ^{distracting} ~~fact~~ ^{thing} if any, just taking the \$4.92 that formed part of the original submission.

Mr. McCallum: Yes.

Mr. Shibley: Notwithstanding the advice you were giving to representatives of Hydro on July 17, that basic figure was never negotiated downwards, or there was never any effort to negotiate it.

Mr. McCallum: Not to my knowledge, no, not that \$4.92.

Mr. Shibley: And this notwithstanding the advice you were giving to them on July 17th.

Mr. McCallum: That's true. Mind you, my ~~g~~ figures became more accurate as time progressed ^{and my has changed}.

Mr. Shibley: Well, just on that question, you also made more precise, what would be normal as a ~~builder's~~ builder's mark-up ~~for~~ or profit, did you not?

Mr. McCallum: YES.

Mr. Shibley: And instead of seven percent, did you not ascertain that on this type of transaction, as little as three percent might be appropriate?

Mr. McCallum: Yes, that was my judgement.

Sept. 4/73
5.25-5.30p.m.
B.A.

Mr. Shibley: Well, that's information you obtained, wasn't it, from one of the people that were in the business?

Mr. McCallum: Yes, that's the information I relied upon, and as I say, it became my judgement.

Mr. Shibley: Exactly. But in terms of correcting figures, ~~and~~ in respect of the construction profit allowance of seven per cent that Mr. Candy thought was reasonable under the circumstances, that did not accord with your subsequent information from people in the business.

Mr. McCallum: Correct.

Mr. Shibley: Who had advised you that a proper return ~~it~~ might be three per cent.

Mr. McCallum: Correct.

Mr. Shibley: All right, would you carry on, please?

Mr. McCallum: "For example, I know of one guaranteed upset price of \$10 million where the general's fee, (pure return to the general) was three per cent. I am advised that the usual fee on GUP's would range from two and a half to three and a quarter per cent. On a building of \$40 million ~~it~~ ^{it} would probably be two and a half per cent. ^{In} ~~and~~ using these figures I am assuming that in the figure of \$34 ~~00~~ ⁰⁰ per square foot, all of Moog's overhead was taken care of. Two and a half per cent of \$40 million, is \$1 million, or seven and a half cents on the rent. If you calculate that the return to Moog is 45 cents, and you pay him what others get by way of a building fee, that is two and a half ^{percent, or} ~~then is a~~ seven and a half ^{a foot} cents on rent, the balance of 45 less seven and a half, or 37-1/2 cents, is attributable to his financial risk. ON this analysis, he is getting a prohibitive return for his financial risk."

Mr. Shibley: Again, Mr. McCallum, did you express yourself in those terms to these representatives of Hydro, as early as July 17, 1971?

Mr. McCallum: Yes, this is as fair a summary as I could make subsequently. I just sat down and put it on my Dictaphone ^{of} what we had discussed. It's a little more orderly, as you can imagine,

Sept. 4/73
5.25-5.30p.m.
B.A.

(Mr. McCallum)

than a discussion ensues when it involves four or five people, but this is the essence of the discussions that we had.

Mr. Shibley: What was their reaction to your telling them that, on your analysis, Moog was getting a prohibitive return for his financial risk?

Mr. McCallum: There was no quarrel with me. There was no quarrel. On the contrary, I think at that particular stage in the proceedings we were learning^{ing}, I guess, together, and I certainly have the memory that there was more or less an agreement at that stage, that that would be too much, if that were the situation.

Mr. Shibley: And yet you have no knowledge of any effort to reduce that ~~return~~ return?

Mr. McCallum: No, I don't have any specific knowledge of that ^{point}.

Mr. Shibley: All right. Carry on, please.

Mr. McCallum: "Sometimes ~~there~~ a guaranteed upset price is coupled with a sharing of savings on cost. Obviously, if the general ~~can~~ ^{can} have a share in the benefit of any saving on cost, he can take a smaller fee; but even if you allow ^a our man/fee of more than three per cent, still he is getting an extraordinarily large return with respect to his ^{pure} financial risk. It might be useful to remember that a general rule of thumb for site overhead ^{is} ~~is~~ two to three per cent of the cost of construction. IN other words, the generals to day are making agreements where they get, say, three per cent for overhead and three per cent for profit, ~~whereas~~ ^{whereas}, not so many years ago they were getting anywhere from six per cent to ~~eight~~ ^{or} eight per cent as pure profit ~~or~~ ^{or} fee for building."

Mr. Shibley: Now, just stopping there again and relying on your expertise, because we ~~are~~ ^{are} going to get into this ~~with~~ with other witnesses, is it a fact that three per cent for overhead and three per cent for profit is a good rule of thumb for a building of this dimension, in terms of dollars.

Mr. McCallum: Yes, I think it is.

Mr. Shibley: Yes, and any suggestion that it should be as high as 10 per cent for overhead and 10 per cent for profit would be, using your words, prohibitively high.

Mr. McCallum: If you were to measure it up against my judgement, I guess I would agree with that.

Mr. Shibley: All right, thank you. Going on to the next document which is page 19 --

Mr. Bullbrook: Well, I just want to inquire if I may, about the genesis of appraised value that's reflected back here. The genesis is still in this document related to cost. May I assume therefore that -- and without getting into what happened afterwards that normally your intention would have been to reflect the question of Moog's cost of construction rather than the appraised value at that time?

Mr. McCallum: Normally, I don't know what I would have done. I am not so sure that I would have agreed with you on that. I will tell you why I did that. I read the documents that they had given to me and I understood that the documents indicated that we were looking for a building of a quality which could be -- would cost, as they said, \$34 a square foot. Now I took it quite literally. When I looked at it and saw that it was going to cost \$34 a square foot, I was busy saying to myself -- "OK, if we are going to get a building costing \$34 a square foot for \$4.92, then if it doesn't cost \$34 a square foot, I had better see to it that we get a reduction in the rent" and that's where I started.

Mr. Shibley: I think that that will become clearer from later memoranda.

Mr. Bullbrook: Well, it might well become clearer but bear with me. I would like to get on the record the fact that this genesis -- because it is the witness's comment that this is the genesis -- but it is not the genesis of appraised value concept, it's the genesis of reflecting a proof of cost, right? Right, Mr. Shibley?

Mr. Shibley: Well, I -- you had better ask --

Mr. Genest: You are under oath.

Mr. McCallum: Yes, that is right.

Mr. Shibley: Thank you. If we could get on -- the

Mr. Shibley)

only reason I am sort of cutting you down a little bit, Mr. Bullbrook, in cutting you off, I am sorry, because I think there's better evidence preferable to this within this ^{from} ~~Mr. Bullbrook:~~ *I realize that, but it is important from my point of view,* as it is for you, to get that on the record.

Mr. Shibley: Mr. McCallum, can we now go to page 19?

Mr. McCallum: Well, we can, but not until I reiterate.

I want everyone to again realize, I have been reading away from that memorandum of mine. Don't again take me as saying that those figures are accurate.

Mr. Shibley: Yes, I understand.

Mr. McCallum: Well, I know you do but you also ask questions that say -- now, did anybody do anything to get those figures as it were, brought into line, or to reduce those figures, and you must appreciate this was happening pretty quickly. We have only got to - where - the 17th of July. I have been on the thing 10 days or something and we really haven't got anywhere yet in our thinking, as you can see ~~when~~ after we get through the rest of it. I know of no ~~effort~~ effort to ~~put~~

Mr. Shibley: Well, Mr. McCallum, those figures and those opinions as expressed by you to this group of men surely were sufficient to excite some anxiety on their part, or should have been ~~sufficient~~ sufficient ~~put~~

Mr. McCallum: I think it did.

Mr. Shibley: ^{to excite} some anxiety on their part, isn't that so?

Mr. McCallum: Absolutely.

Mr. Shibley: That was the whole purpose of your making the observations.

Mr. McCallum: Absolutely, and I do believe that they were as concerned as I was to learn more, and if the sense of what I was saying was accurate, to do something about it.

Mr. Shibley: All right. Well, we'll see.

Now, then, let's go on.

Mr. McCallum: OK, where do we go though?

Mr. Shibley: On page 19 of the brief. I think if I

Sept. 4/73
5.30 to 5.35 pm
DT

(Mr. Shibley)

I am not mistaken, those are notes which you either took at or took to the meeting.

Mr. McCallum: Yes, but they seem to be all out of order, some way or another. I don't know -- did I have that thing numbered one, for instance, to start with? May I just look at the original for a moment, please?

Mr. Shibley: May I tell you what you have done here?

Mr. McCallum: What have I done?

Mr. Shibley: You have taken two sheets of a paper to a meeting with notes on it and then used whatever space remained on those two sheets to make further notes of a discussion that took place at that meeting. I am speculating, because what I see is you took page one and two and then you flipped ^{two} ~~to~~ and wrote the notes on the back of it as page three and then you went to the back of page one to complete your notes as page four. Now, does that refresh your memory?

Mr. McCallum: No, but I certainly look like I was short of paper, don't I?

Mr. Shibley: Yes.

Mr. McCallum: And --

Mr. Bullbrook: Comparatively small deal.

Mr. McCallum: Yes, well, ^{a vest} ~~my best~~ pocket is a vest pocket.

Mr. Shibley: Let's take them one page at a time,

Mr. McCallum.

Mr. McCallum: All right.

Mr. Shibley: The page that's marked one, \$4.92 at when you deduct eight per cent over 30 years, ~~maintenance~~ maintenance - that's more or less the same content as the written memorandum that you just reviewed, is it not?

(H-2071 to follow)

H-2071-1

(Mr. Shibley)

~~over 30 years when you deduct maintenance'~~

~~That is more or less the same content as the written memorandum that you have just reviewed, is it not?~~

Mr. McCallum: Yes, it is. And I don't think it needs to be read when it means the same.

Mr. Shibley: Then two profits; 1) on construction; 2) on maintenance and... Actually, it is three profits; 1) on construction; 2) on maintenance; 3) on financing.

Will you explain that, please?

Mr. McCallum: Yes, I was not attempting to allocate profits into one corner. I was looking for sources of his making money.

Mr. Shibley: Right.

Mr. McCallum: And trying to get a picture of the totality.

Mr. Shibley: Right.

Mr. McCallum: And what I was saying to myself was "Well, on construction he could make money if he borrowed more than it cost him to put it up. That is money in his pocket." On maintenance I was saying to myself, "He is busy saying that we are going to have so much a foot which would account for maintenance and janitor service and so on; and if he gets it for less there is money in there for him". And thirdly, I was saying to myself, "if he gets his money for less than he says he is going to get it he can make money there". I had all sorts of ideas, and most of you are acquainted with them, of how he could make money on financing; and just generally he could make money on financing. That is as far as I got in my thinking at that point.

Mr. Shibley: All right. Would you carry on with page 2?
~~On~~ Just before you leave the maintenance, did you have regard for the fact he might make money on maintenance against the background of Y and R proposing \$1.24 as their maintenance cost with a base year of 1974?

Mr. McCallum: No, I didn't. I just didn't. I don't know if I had it, sir, number one,

Mr. Shibley: It was in the April 10 memorandum.

H02071-2

Mr. McCallum: Oh, well, then it was available to me. I didn't do it in light of that.

Mr. Shibley: You volunteered certain comments about Y and R as managers, and I would just point that out to you. Might that have been a cause for your concern?

Mr. McCallum: No, it wasn't.

Mr. Shibley: All right.

Mr. McCallum: I wasn't looking at them. I was ~~was~~

Mr. Shibley: Just generally ~~was~~

Mr. McCallum: I was discussing these matters with Mr. Candy, and when we were talking about costs of maintenance and so on, I was taking his word for it, I wasn't looking at what other people had said.

Mr. Shibley: All right. May we go on to page 2, please?

Mr. McCallum: I am not ~~too~~ sure which is page 2.

Mr. Shibley: It is page 20 of the brief.

Mr. McCallum: "If his cost"?

Mr. Shibley: Yes, "If his cost" That is page 20 of the brief.

Mr. McCallum: "If his cost is \$34 a square foot, does this include architect and other professional fees?" Then I have written "8 per cent." "Therefore repay \$34 at 8 per cent over 30 years is \$3.02 for rent\$."

"He gets \$3.47.

"He repays \$3.02.

"So he nets .45 cents for two profits, plus the architects".

~~Then~~ ^{And} I am saying that comes to about $\frac{1}{2}$ million a year.

"Out of 45¢ he must pay himself for his financing and his building, his architects and his lawyers."

Then I am guessing:

"Architects fee ^{per cent} 5% of \$34 ~~is~~ \$1.70 ^(that's cents) ~~on cost~~ ¹⁵ on cost.

Therefore the net net profit ~~is~~ ^{would be} \$45 ~~is~~ ^{which is} 15 ~~on rent~~ ^{the} minus

Mr. Shibley: Then you have got to go to the back of that page now for page 3.

H-2071-3

Mr. McCallum: "Rent (including maintenance) \$4.92. If the building cost Moog less than \$34 (exclusive of ^{the} profit to you) ^(by many dollars) the rent is reduced. ~~2~~ per thousand. If the building costs more, it is his baby.

"Then he gets net net ~~rent~~ return of 45¢ rent plus anything he can ~~make~~ on his cost of money being below 8 per cent."

So at that point as you can see I am busy trying to get some words attached to the three sources of profit.

I say:

"10% of \$40 million is \$4 million, is the profit to build, is 30 cents on the rent."

Use 6 - 8 per cent"

And there I am trying on for size some other figures to see how much that adds up for rent.

Those figures, incidentally, are ~~was~~ usually being given to me by John Dean.

Mr. Shibley: Yes.

Mr. McCallum: He did the calculations. *Particularly when I*

Mr. Shibley: He was at the meeting with you?

Mr. McCallum: ~~Particularly when I~~ *Yes.*

Mr. Shibley: Now going to page 4 which is the back of page

19.

Mr. McCallum: "If your money costs you 8 per cent - you make ~~45~~ ^(minus) ~~20~~ ^(that's) 25 cents a foot or \$300,000 a year on \$1,200,000, the present value of which is \$3.3 million.

"If your money costs 7 per cent" and so on, "you make \$5.1 million".

Mr. Shibley: Now when you talk about present value, Mr. McCallum, that is the price at which Canada Square could literally sell the contract if it had a buyer tomorrow. Is that correct?

Mr. McCallum: Well, I wouldn't want to get into that with you.

Mr. Shibley: All right.

Mr. McCallum: It isn't really any more than an arithmetical calculation of the present value of an income stream at that..

H-2072-1 follows

(Mr. McCallum)

~~be any more than an arithmetical calculation of the present value of an income stream at that rate of interest, whether he could sell it or not,~~ might get us into all sorts of fields. I was simply saying to myself, what's its present value? What do you want us to do with it. ~~Some~~

Mr. Shibley: We will leave that for other people.

Then you have got some more, page 22, when you called Val ~~W~~ Voore. Was he ~~a~~ your source as to certain information?

Mr. McCallum: He was one of them. He happens to be the -- those are the scratchings that I made at the time I was talking to him over the telephone.

Mr. Shibley: Who's he with?

Mr. McCallum: Bregman and Hamann.

Mr. Shibley: Yes.

Mr. McCallum: He was a man I had worked with on some big projects and a man whose judgement I respected.

Mr. Shibley: He is an architect? They are very large in the architectural field.

Mr. McCallum: He's one of the most senior men in that very large firm.

Mr. Shibley: Yes.

Mr. McCallum: A man in whom I have confidence and we discussed matters.

Mr. Shibley: You were discussing builders fees here? Overhead, profit, etc.

Mr. McCallum: Yes.

Mr. Shibley: And what figure, ~~is it~~ ^{did} that you get?

Mr. McCallum: Well he was giving those ones that you have seen. He was explaining the circumstances that he knew of and he was saying roughly two and half, three and half, I guess somewhere in that neighbourhood, I don't remember the exact figures, some of them you can see were jotted down.

Mr. Shibley: Yes. All right. So that is where you got your three per cent figures, ~~that from~~ ^{that from} part of the earlier memorandum?

Sep 4/73
5.40-5.45 pm
V.H.

Mr. McCallum: Yes. And those figures I got from him are no better than the questions I put to him, as you can appreciate, which I now don't really remember. But I WAS trying to get some support for my suspicions and I guess you can see I was getting some. I was wondering about some of the other figures that had been used in my presence.

Mr. Shibley: All right. Can we go on to page 23.

Mr. McCallum: Yes. Well I am there. Do you want me to read it? Is that going to help?

Mr. Shibley: If we can go through it together.

Mr. McCallum: Well, all right. There is a little docket at the top ...

Mr. Shibley: This is a conversation you had with John Dean and Ken Candy at length on a couple of occasions, of a note of that.

Mr. McCallum: That's right.

Mr. Shibley: And you go on and say "In reviewing the financial ~~analysis~~ analysis entitled 'Basis for Accepting Building Costs' ...

Mr. McCallum: Where is that?

Mr. Shibley: That's an exhibit I might tell you.

Mr. McCallum: ~~Because~~ ^{be} It is a document. It is something that at sometime may produce ^A ~~one~~.

Mr. Shibley: I'll get it for you in a minute.

Mr. McCallum: Oh, I've found one.

Mr. Shibley: I looked at it this morning myself.

Mr. McCallum: I don't know what number it is. I just have it here in the middle of all these documents.

Mr. Shibley: I believe its exhibit 79, which is a memorandum dated July 6 from Mr. Dean and Mr. Nastich and in which there are appendices, as I remember it where he breaks out the profit margins, etc., and makes the allowances to which you are referring. The thrust of this memorandum appears to be that in examining John Dean's memo, you -- am I wrong in that?

Sep. 4/73
5:40-5:45 pm
V.H.

Genest:

Mr. [REDACTED]: I just can't find it in that exhibit.

A document entitled the same way as Mr. McCallum's original copy. It wouldn't be a memorandum dated October 1, 1971?

Mr. Shibley: Oh no, this is much earlier. This memorandum itself is dated July 18.

Mr. Genest: If you will look at Mr. McCallum's copy of it, it doesn't appear in that form in Mr. Dean's memo of July 6.

Mr. Shibley: You are right. Then I don't know what document he is talking about. Have we got it?

Mr. McCallum: Sure.

Mr. Shibley: Oh, it is not an exhibit. It's another document. Would you carry on please. We will put it in tomorrow.

3
H-2072 follows

Sep. 4/73
5.45-5.50 pm
V.H.

Mr. Shibley: Would you carry on please.

Mr. McCallum: All right sir.

~~Mr. Shibley: We will put it in tomorrow.~~

Mr. McCallum: Well, I had written the following,

~~Mr. Shibley: I have written the following:~~

~~Mr. McCallum: Did you want me to start reading now~~

sir?

Mr. Shibley: If you will, Mr. McCallum. ~~I would~~

~~the~~ Perhaps I can help you. That first paragraph simply says in that analysis I cannot accept the proposition that in re Canada Square there should be added to the \$34 per square foot ~~the~~ ^{building} cost of an additional 25 per cent to cover overheads, contingencies and profits."

Now can you explain that ~~me~~ please? What had happened?

Mr. McCallum: Well, ~~when~~ it had been suggested to me that \$34 didn't include this and ~~therefore~~ therefore there should be added 25 per cent to cover overheads, contingencies, profits. And you can see me saying that I don't think it should be. And I go on to say: "I read the Canada Square letter of January 24 on page 4 as saying that they can put up Hydro's building at an overall cost of the building of approximately \$34 a square foot. To me, therefore, this figure includes overheads, contingencies and profits. I am supported in this conclusion as a result of my telephone conversation with Candy this afternoon when he told me that he had spent most of this morning getting Moog to agree that if his cost was less than \$34 it would be reflected in a reduction of rent. In other words, Moog clearly conducted the whole conversation on the basis that he could produce Hydro's building at a total cost of \$34 a square foot. At the same time, I know that his net rental (after you deduct \$1.45 ^{a foot} for operating and maintenance) is \$3.47 a foot. ~~The~~ The present value of \$3.47 ~~per~~ for 30 years at eight per cent is \$40,800,000 or \$40 a foot. I have concluded therefore that Moog's quotation of ~~his~~ ^a cost ~~of~~ ^{a foot} construction of \$34 is much less than his actual rent return ~~would~~ ^{would} appear to indicate, that is \$40 a square foot. Since we

Sep. 4/73
5.45-5.50 pm
V.H.

(Mr. McCallum)

are really just concerned with his rental figures, I am forced to conclude that he is truly going to get a profit or fee or return to him of 45 cents per foot for the next 30 years, and I think that is too great a return for the risks he must take.

" I asked John Dean why he felt free in his ~~analysis~~ analysis called "Basis for Accepting Building Cost" to add 25 per cent for overhead, contingencies and profits to Moog's cost of building of \$34. I told him ^{that} ~~as~~ I read Moog's letter, the \$34 is an overall cost. Dean agreed and said that he added them only because it didn't make sense to him unless he did. I see what he means because ^{as have} ~~I~~ explained above, Moog's cost figures ^{is} ~~are~~ \$34 ^a square foot, whereas a conversion of his rent figures ^{is} ~~are~~ \$40 ^a square foot, providing you are using eight per cent as the cost of money. The only way you can relate the ~~\$34~~ ^{\$}34 to the resulting ~~\$40~~ ^{\$}40 is to conclude that the \$34 does not include the return to the entrepreneur.

" Candy read to me a letter written to him by the Bank of Montreal, Yonge and Bloor, I think, which seemed to indicate that the Canada Square "group of companies" (what companies does that mean?) have in the past lived up to obligations incurred with the bank in respect to bridge financing and multi-million-dollar deals, and then they said something that ~~they~~ indicated to me that they expected to be called upon in ~~the~~ ^{re} the Hydro deal to provide financing up until \$40 million had been spent, and presumably the building constructed, at which point, I concluded that they would be placing their permanent financing. If this is a fair conclusion ^{then} ~~and~~ ^{is} that ^a danger signal because ^{had} ~~I~~ theretofore expected that the builder would be using his draws under his permanent financing to construct the building. AS I pointed out to ~~EMMAN~~ Candy, if he is going borrow bank money on short term to construct the building, ^{would} ~~we~~ ^{have} have to have a guarantee that he has available ^{the} ~~long~~ ^{long}-term money upon completion or we might find that the building was up and the \$40 million was due to the bank.

Mr. Shibley: Just stopping there, and would be due to the bank at a rate that wasn't controlled by ~~the~~ Hydro?

Mr. McCallum: I guess that would be true too.

Mr. Shibley: Yes. Now what response did you get to this advice on July 18?

Mr. McCallum: From Ken Candy?

Mr. Shibley: Yes.

Mr. McCallum: Well, my memory of the matter really isn't much better than what I have got written there, and as you can see in the writing, Ken Candy was busy trying to deal with this question of a cost of \$34, and getting a change if it wasn't, ~~and~~ as far as the group of companies is concerned and my scepticism about the so-called bank letter, well he went to work to try and get some assistance from me, ~~and~~ I think he may have told you, although if he didn't I know it happened, although I can't give his evidence for him, he asked them to, ~~first of all, he told them that I wasn't much impressed with the bank letter~~

H-2074 follows

Sept. 4/73

5:50-5:55pm

C.B.

(Mr. McCallum)

~~and then~~ first of all, I guess he told them that I wasn't much impressed with the bank letter, ~~because~~ ^{because} it didn't seem to me to cover the people that were concerned at all.

Secondly, he want to work to get financial statements that ~~was~~ ^{were} still much involved, ~~and~~ ^{them for them. He asked for} I'm sure he asked ~~for~~ statements as to the principals or the beneficial owners of the companies, ~~and~~ I was pushing him and he was acting on my suggestion to get this kind of informatinn from Canada Square.

Some as I have reported to you he got, and some ~~one~~ didn't get.

Mr. Shibley: With respect to Mr. Dean's memorandum, and I'm sorry it is not ~~an~~ ^{an} exhibit, ~~wherein~~ ^{wherein} he added on to the ~~and~~ actually, he started with a base figure of \$35 ~~per~~ per square foot, did he not?

Mr. McCallum: Well, I guess so.

Mr. Shibley: Yes.

Mr. McCallum: I haven't looked at the document from that day to this, as far as I know.

Mr. Shibley: In any event, ~~and~~ whatever it is, he added on to the base figure for overhead, profit, etc. Did Mr. Dean give you any indication that Mr. Moog had made any representations ~~to~~ to you in that respect?

Mr. McCallum: No, none at all.

Mr. Shibley: This was just his own idea.

Mr. McCallum: NO, ~~I~~ ^{for} I don't think that ~~John Dean~~ ^{it} could be said to be solely his own idea, and this is only an impression I retain. I think that it was the idea of Dean and Candy if you will. I think that John Dean was guided in some ~~substantial~~ considerable measure by Ken Candy's advice and I can't think that

Sept. 4/73

5:50-5:55 pm
C.B.

(Mr. McCallum)

just
this was necessarily *his* own ideas.

Mr. Shibley: So that to get the picture clear at this point of time, two representatives of Hydro were indicating in written and other form to you as counsel that they didn't view the \$34 per square foot to be the whole of the allowance to the builder, but rather that there would be added on, it would be appropriate to add on the cost of interest during construction, and taxes, overheads and profits and contingency allowances. Is that correct?

Mr. McCallum: No, I don't think that is, Mr. Shibley.

Mr. Shibley: Well, what *is it*?

Mr. McCallum: I think that those figures that he has in the basis for accepting building costs are nothing more than the sort of thing that I've been doing, ~~about~~ ^{they are} looking at various alternatives, but to suggest, as I thought you were ~~are~~ doing, that they were putting that forward in some way, I don't think so, sir. I think that they were trying it on for size and sometimes it helps your thinking to have to write it out. I don't think those men were trying to do any more than I was at that point. We were trying to help each other. I certainly didn't regard it as being anything that they were promoting back home as it were, or that they were going *to*.

Mr. Shibley: Mr. Chairman, this is somewhat heavy going for any witness and I'd like to suggest that we might adjourn now until tomorrow morning if that's acceptable to everyone.

Mr. Chairman: Are there any questions at this point, from members of the committee?

Mr. Renwick: Just one, I understood Mr. McCallum to say that because of the Bank of Montreal letter being not very clear or satisfactory, that you had asked Hydro to get financial statements,

Sept. 4/73

5:50-5:55 pm

C.B.

(Mr. Renwick)

or recommended to them that they get complete financial statements from the Canada Square ~~business~~ group of companies, *is that correct?* ~~as you say~~

Mr. McCallum: Yes sir.

~~at~~ The committee adjourned at ^{5.55} ~~5.55~~ o'clock, p.m.

INDEX TO EXHIBITS

Exhibit	Page	Description
225	2058-2	File of J. F. McCallum, Q.C., re Ontario Hydro head office building.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

A.E. Ames and Co. Ltd. counsel:

J.W. Garrow
J.W. Mik

President, Canada Square Corp. Ltd.:

Gerhard W. Moog

Ontario Hydro counsel:

J.F. McCallum, QC

List of exhibits introduced during this sitting appears on the next page.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, September 5, 1973

Morning session

Sept. 5, 1973
10.10-10.15 a.m.
M.F.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

H - 2075 - 1

The committee met at 10.10 o'clock a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, Mr. Allan has arrived and announced we have a quorum, and I will call the meeting to order. Mr. McCallum - is he close by? Mr. McCallum, we are calling you to come forward, sir.

You ~~kw~~ look a little draggy this morning, Mr. McCallum.

Mr. McCallum: Yes, I had a hard night, and then, having had a hard night, I had just as hard a morning. I just got told by Mr. Genest that whatever I said yesterday was misunderstood by the press. I haven't really read the article.

Mr. Genest: Well, read it.

Mr. McCallum: So I don't seem to be able to win any way at all; it was a difficult night. Let me, without having read it, let me just say this. I may say my hard night had nothing to do with these proceedings at all; ^{we had} a little problem at home.

Yesterday, in the beginning, I was having a philosophical discussion with Jim Renwick about the merits of the proposal system and the tender system. Now in my previous day's testimony I had also referred to that. On both occasions, as far as I am concerned, I made it perfectly clear that the best way to proceed and the way that the best businessmen were proceeding was by way of the proposal system because it offered many advantages that the tender system didn't. I said nothing yesterday, as far as I am concerned, having neither read the press nor my transcript, that I hadn't already said, which was that the proposal system was the smart business-like way to go and was the way in which they were going today.

What I did say yesterday was this. That although

H - 2075 - 2

(Mr. McCallum)

that's the best business way to go, and that's the way I think all businesses including governments ought to go, we have the strangest kind of a process in government today, where at the sound of a boo, somebody jumps up and says "Huh, you'll have to prove that that's the best way". And what I said yesterday was this. The proposal system is the best; it is the way that should be done; it ~~is~~ ~~the~~ way that Hydro did it, but because of the kind of processes where you are connected with the government, because someone suggests that there's been some patronage or something, they then say "Huh, we won't just investigate patronage, we will investigate the whole deal." And then you're called upon to demonstrate that it was the best deal you took, and when people look for the best deal, because their minds are conditioned to do this, they say who was the lowest bidder? And that isn't the name of the game when it comes to proposals.

My experience this summer had embittered me, if you will, to the place where I was being completely cynical yesterday when I said to Jim Renwick "You people in the government can't seem to have the best deal that's available to you, which is available under the proposal system; you seem to have to go a more expensive route called the tender system, because then you can show the whole wide world" - and I said it was a political judgment, I don't pretend to be a politician - ~~that~~ then you can demonstrate to the whole wide world that there are the tenders, there's the one you took, and I said it may not even be the lowest but you will be able to say why.

Mr. Allan: You said you would take the lowest, though.

Mr. McCallum: That's right, I would take the lowest if I could, and that's exactly what you do under the tender system.

Mr. Allan: Because of the system .

Mr. McCallum: Because of the system.

Sept. 4, 1973
10.19-10.15 a.m.
M.F.

H - 2065 - 3

Mr. Allan: Although you might feel that you should have taken one of the others.

Mr. McCallum: And that lowest - as I am trying to make the point very clear today, would probably not be anywhere near as low as you would get under a proposal system. And let me make another point. If Hydro in this case, to be specific - and never mind the philosophies we were going on yesterday - if Hydro in this case were to have gone the tender system they would have been in a real box :

(a) they probably wouldn't be putting it out to tender until today because they still haven't got all the drawings made, and you can't put it out ~~out~~^{until} all the drawings are made;

(b) they would have been putting it out to tender when interest rates have risen ~~now~~^{two} to three per cent on all your money right across the board, when the cost of construction has gone up higher than we have ever seen it. ~~It would have been a disaster from Hydro's point of view if they had done exactly that, if they had gone by way of the tender system.~~

Tape H - 2076 follows

Sep. 5/73
10.15 to 10.20 am
fvk

(Mr. McCallum)

It would have been a disaster from Hydro's point of view, if they had done exactly that, if they had gone by way of the tender system. Now, if you're going to have the whole of my philosophy, that's the whole of my philosophy. What I don't want is to leave any doubt in anybody's mind that I, never at any time yesterday, nor am I today, suggesting that the proposal route isn't better; it's just that it's a crude system that people don't seem to believe that ~~xxxx~~ you're making the best deal unless you are somehow able to demonstrate it. That's what compelled me to say it looks like you've got to take the most inefficient way ~~around~~ around government. You seem to have to go the tender route and that's not the best way to go, and that's not how organizations who aren't so highly politically oriented as Hydro are, in fact, going today.

Mr. Chairman: Thanks, Mr. McCallum. I'm glad to give you that opportunity of clearing the record. I think the members of the committee got ~~the~~ the point yesterday of what you were saying but if Mr. Genest felt that the public were not getting it ~~the~~ we're glad to have you take that opportunity.

Mr. McCallum: I don't really do it to keep him happy. He has to put up with me the way I am. I do it because I just feel that, in discussing it mildly and quietly with Jim Renwick yesterday, it was a continuation of a discussion we had off the record here, and, for instance, when I was pointing out to him yesterday, and to you, that the proposal ~~xx~~ system involved more than just price when you were looking for maintenance, I had very much in my mind what Hydro did here. That's been the thrust of Hydro's evidence, too. They've been trying to say to you in written papers, and in oral evidence here, that there was more to picking this man than just a question of dollars and cents and what his rent was. They knew they had to have a partnership as, indeed, you can see for thirty years, and it's a long and a tough partnership. And they used, as one of the main reasons for taking this man, their trust in him and ~~the~~ ^{Jim} the ability ~~that~~ of ~~he~~ and his firm, and they

Sep. 5/74
10.15 to 10.20 am
fvk

(Mr. McCallum)

carried that out by the sort of ways that they tried to lock him in as you'll see.

Mr. Shibley: Mr. McCallum, you mentioned yesterday having some knowledge and experience with Y&R Properties.

Mr. McCallum: I ~~think~~ told you I was a tenant of theirs for 20 years, yes.

Mr. Shibley: Now, in terms of the qualifications of ~~the~~ ^a developer that would meet the standards that you yourself set in the sense of a partnership for 30 years, someone on whom you might rely upon, and so on, would Y&R Properties fulfil that description?

Mr. McCallum: I don't know and never met Moog and Canada Square until I ~~was~~ was hired on this deal. I had met Vern Tatham and I had met Kenny Rotenberg and I dealt with them for many ~~many~~ many years. I think that they do, but that's not in any way to denigrate from any other person who is in the contest because I don't know them. I didn't know them, so if you asked me who I would do business with, I like Vern Tatham.

Mr. Shibley: Mr. McCallum, one of the questions before this committee is having found, or come to a decision to go ~~to~~ the developer route, did Hydro make an honest competition of it from among people who fill the description that you've given?

Mr. McCallum: I don't think anyone here can deny that the people that they looked at, and who were in the competition, were first class. Leave aside Ellis-Don, because he didn't impress me very much, but certainly Walter Zwig and Horizon were thoroughly competent. Kenny Rotenberg and Vern Tatham, of Y&R, ~~2~~ were thoroughly competent. Moog and his organization were thoroughly competent. They were in first class company when they were making this choice.

Mr. Shibley: I want to refer you to exhibit 211. You had dealt yesterday, at the conclusion of your evidence, with the memo of July 18, 1972, on page 23 of your exhibit book. Exhibit

Sep. 5/73
10.15 to 10.20 am
fvk

(Mr. Shibley)

211 is a memorandum prepared by Mr. Moog referable to a meeting he had on that day

Mr. McCallum: ~~Where~~ Where is it? I'll be helped a lot if I see it.

Mr. Chairman: Mr. Moore's getting it.

Mr. McCallum: ~~XXXXXXXXXXXX~~ Now, sir, go ahead.

~~Mr. Shibley: He notices that it starts off.~~

(Tape H-2077 follows)

Sept. 5/73
10:20 - 10:25 am.
M.S.

Mr. Shibley: Notice that it starts off:

"Prices by others regarding annual expenses, ~~excepting~~ business and realty taxes, range from \$1.25 - \$1.40 ... Candy allows \$1.45 per sq. ft. per annum for such expenses."

Now, did you discuss, on July 18, with Mr. Candy, the fact that although other developers, including Y and R, and Horizon, but particularly Y and R, had made a proposal for a maintenance charge less than Canada Square, that he was nevertheless intending to allow, or go along with the allowance, of \$1.45?

Mr. McCallum: No. I have a feeling that you asked that or something very near to that yesterday, and my answer is no, he did not discuss it with me in that light.

Mr. Shibley: Well, did he discuss it with you at all?

Mr. McCallum: Yes. The \$1.45 allowance?

Mr. Shibley: Yes.

Mr. McCallum: Yes.

Mr. Shibley: And in that respect, was it the subject of any exchange between you? That here were at least two other developers whose maintenance charges were lower?

Mr. McCallum: Not then, but later on we certainly, ~~and~~ as you'll see from the evidence, had a discussion about maintenance charges. We discussed theirs.

Mr. Shibley: Yes. But as at the time, this was the time the Commission ~~was~~ was about to make a selection and decision the following day.

Mr. McCallum: That's true. At that particular time I have no memory of his having discussed their other proposals, insofar as what they were putting opposite their maintenance figures.

Mr. Shibley: And against the background of your

Sept. 5/73
10:20 - 10:25 am.
M.S.

(Mr. Shibley)

then thinking that the amount built in for profits to Moog was high. Have you any comment to make upon Candy's agreement with Mr. Moog, that Mr. Moog should be allowed \$1.45 for maintenance?

Mr. McCallum: Well, Mr. Candy was much more familiar and had access to people who were even more familiar with this sort of thing than I was. At that particular time Mr. Candy and I were not trying, because we haven't gotten^d to that place in our thinking, to reflect escalation over the years that would apply between the time we were talking, which was in 1972, and 1976 or whenever it is that the base year would be applied.

Mr. Shibley: '75.

Mr. McCallum: I beg your pardon, sir?

Mr. Shibley: I'm sorry, go ahead.

Mr. McCallum: We just weren't thinking that way. So, ~~that~~ we were discussing the question of maintenance charges in the light of what each of us had some idea was happening right then. And the figures that you see me using are misleading for the reason that, at that point, we weren't concerning ourselves with what is the real essence of the problem, which is to look at the figures for maintenance and janitor services when it counts, which is some time at the end of 1976.

Mr. Shibley: I'd like to refer you, on page 23 of the brief, the first page of the July 18 memo, it also says that Candy "had spent most of this morning getting M to agree that if his cost was less than \$34 it would be reflected in a reduction of rent." And Mr. Bullbrook was emphasizing the word "cost". And then in this same Exhibit 211, Mr. Moog is ~~now~~ ^{now} mentioning himself, I suppose, or the file: "It was agreed that we iron out the \$34.00 per sq. ft. question in principle as per the attached draft, but we would not finalize the language at this moment to avoid questioning by the Commission in tomorrow's meeting."

Sept. 5/73
10:20 - 10:25 am.
M.S.

(Mr. Shibley)

Now, did Mr. Candy tell you that in the course of his discussion with Mr. Moog it was part of that discussion that they would not finalize the language to avoid, at that time, questioning by the Commission in tomorrow's meeting?

Mr. McCallum: No he did not.

Mr. Shibley: And were you left ^{with} the impression, on July 18, from your conversations with Candy, that what he and Mr. Moog ^{had} so to speak, settled that afternoon was that the \$34 figure was to be a cost figure, as opposed to what is yet to be defined as an appraised value figure?

Mr. McCallum: Yes. In my conversation with Ken Candy we spoke of a cost of \$34. He made no mention really of any change from that with Moog. I just don't believe that Ken Candy was a party to a situation where he was talking out one side of his mouth to Moog and the other side of his mouth to me. I truly believe that Ken Candy only spoke about a cost of \$34. And that memorandum that you've produced to me, I don't believe is accurate if it represents Ken Candy's agreement. I don't believe he agreed to it at all. He just wouldn't do that sort of thing.

Mr. Shibley: What part of it do you say you don't agree with?

Mr. McCallum: Well, if that purports to say that Ken Candy agreed to hide something and not discuss it with me or members of the Commission, then I don't believe it. I just have that kind of confidence in Ken Candy.

Mr. Shibley: Why would Mr. Moog compile a memorandum ---

Mr. McCallum: Well, Mr. ---

~~Mr. Shibley: Just ask him I finish the question.~~

~~Mr. McCallum: This is not a communication.~~

September 5, 1973
10.25 - 10.30 a.m.
M.R.

(Mr. Shibley)

~~Mr. Moog's memorandum~~
~~Mr. Moog's memorandum~~
Mr. Shibley: Just wait until I finish the question, Mr. McCallum.

Mr. McCallum: Well, you know, you're asking me why ...

Mr. Shibley: This is not a communication from Mr. Moog to some third person, where a representation by Mr. Moog might have been material, or misrepresentation by him material; this is a memorandum to his file wherein he is recording what took place at the meeting.

Mr. McCallum: I know it is and it's just like another memorandum that was produced around here where, when you examined ^{him} ~~him~~ you soon had him saying, "Well, I guess I didn't mean that, I guess it was wishful thinking."

I can't account for what Mr. Moog writes but it doesn't take me by surprise that he has something in here that is not accurate.

Mr. Deans: Can I ask you a question then? That seems to fly in the face of the confidence that you have in Mr. Moog and his company when it doesn't take you by surprise ~~and~~

Mr. McCallum: No, it doesn't.

Mr. Deans: ~~and~~ that there are things in there that aren't accurate.

Mr. McCallum: I think that Mr. Moog was a man who was looking to make a deal and what he was putting in memos to himself, I really don't know and I don't think I'm the least bit competent to say what was in that man's mind. I'm trying to help Mr. Shibley but I don't think I'm competent.

Mr. Deans: That's ~~the~~ a better answer.

Mr. McCallum: All right, but what I'm saying to you in addition to that; It doesn't fly in the face of it. I expect what I would call some puffery, some exaggeration from developers when they are coming to make a deal.

September 5, 1973
10.25 - 10.30 a.m.
M.R.

(Mr. McCallum)

I have hardly been in a deal that I haven't experienced that and I just find them mostly overstating their case, putting forward kites, putting up things that they are going to try and get and, hopefully, they don't get. That's a part of their business.

Mr. Deans: But Mr. McCallum, that isn't what is in this, is it?

Mr. McCallum: Well, no, he's using the words there that he says, "It was agreed that we would iron out the \$34 per square foot question in principle as per the attached draft, but we would not finalize the language at this moment to avoid questioning by the commission in tomorrow's meeting".

Now, what I've said to you, Mr. Deans, is that I don't believe ~~that~~ Ken Candy agreed to keep something in his vest pocket and thus avoid an issue with the commission and then already have made an agreement with Mr. Moog. I don't think that's the cut of the man's jib, ~~and~~ you ask me an opinion, I gave you the opinion.

Mr. Deans: But you also volunteered another opinion in giving that opinion. The opinion you volunteered is that you are not surprised. Now, ~~—~~

Mr. McCallum: That Moog might have said that.

Mr. Deans: Right, you're not surprised that that might be ~~an~~ accurate and I ~~—~~

Mr. McCallum: Well, we've just had experience right in these proceedings where he used the same words that things were agreed upon that we demonstrated, Mr. Shibley demonstrated, weren't agreed upon.

Mr. Deans: How can you then have so much confidence in his ability?

Mr. McCallum: Because he's doing, I guess as he explained himself - he is doing some wishful thinking. This demonstration here wasn't intended to persuade anybody.

September 5, 1973
10.25 - 10.30 a.m.
M.R.

Mr. Deans: No, but let me just say ^{to you} ~~that~~ that

Mr. Moog has said on the witness stand that much of the development is a matter of trust.

Much of it is a matter of trust and what he's doing is a matter of trust between himself and Hydro, and you have said that you have to choose a partner in whom you have confidence because ^{it's a} ~~the~~ 30 year deal. Now at the same time you are telling me that you are not surprised that what he has written down is inaccurate.

Mr. McCallum: Neither am I.

Mr. Deans: Now, I think it's pretty difficult to have that opinion of somebody and still think that he's a person you would enter into that kind of a contract ~~and~~ with over 30 years.

Mr. McCallum: I didn't enter into that form of a contract. Look, Mr. Deans, I didn't ~~and~~ select Mr. Moog. I didn't have anything to do with the selection of Mr. Moog. He was selected by others for reasons that they found pertinent. ~~Mr.~~ Whether I would have selected him or not won't help you in these proceedings at all.

All I've said ^{is} that I'm not surprised.

Mr. W. Hodgson: Mr. Chairman, I think that Mr. McCallum also said that ⁱⁿ ~~this is not~~ with his experience with developers, this is not unusual for ~~developers to~~

~~_____~~

H-2079 to follow

Sept. 5/73
10:30-10:35 am
PLG

(Wm. Hodgson)

~~that experience with developers that he has dealt with over the years.~~
developers to ~~fly~~ such kites and have such things. Not just pertaining to Canada Square alone but to a great many developers that he has dealt with over the years.

Mr. Shibley: Mr. Hodgson, the difference of Exhibit 211, though, is that it wasn't flying a kite across the path of anyone, it wasn't a puffing, it wasn't a representation to anyone. This is a record of what his memory is of a discussion with Mr. Candy on July 18, so that to characterize it as puffing or overstatement is not in accord with the nature of the document, if you follow me.

Mr. Wm. Hodgson: Maybe so but I think that ...

Mr. Shibley: If ~~you~~ ^{he} had written a letter to somebody...

Mr. W. Hodgson: I think Mr. McCallum has cleared that up by saying that Ken Candy didn't think that any part of the statement, and also that it is not unusual for other developers to play ball in the same manner.

Mr. Shibley: In any event, Mr. McCallum, Mr. Candy did discuss the fact that he had had conversation with Mr. Moog that same day, referable to the \$34 figure. Is that correct? I am looking at page 23 of the brief.

Mr. McCallum: Yes, that's correct.
Mr. Shibley: Your understanding from what Candy told you was that you were talking in terms of cost, not appraised value.

Mr. McCallum: Yes Sir, that is just as I have it written.

Mr. Shibley: O.K. Now then I'd like to move along to the very next document which is on page 26 of the Exhibit and styled, "Notes from Commission" — I am sorry, "Meeting with Hydro Commission, Wednesday, July 19." Do I gather you were at the meeting of the Commission at which the decision was taken to enter into a contract with Canada Square?

Mr. McCallum: Just a minute. I am digging to see what it is you are referring to.

Mr. Shibley: Page 26 of the exhibit.

Mr. Genest: Mr. Shibley, my copy isn't page ..
what date is it?

Mr. Shibley: It is July 19, 1972.

Mr. Genest: Oh.

Mr. Shibley: The very next document.

Mr. ~~McCallum~~ McCallum: Yes. This is it.

Mr. Shibley: I am following them in the order in
the brief.

Mr. ~~McCallum~~ McCallum: I am sorry. I just couldn't find it.

Mr. Shibley: Did you attend that meeting?

Mr. McCallum: Yes. That was the first meeting I
attended, July 19.

Mr. Shibley: And would you just explain what
transpired ~~after~~ at the meeting, The information you provided
to the Commissioners at the meeting, the information Mr. Candy
provided, or anyone else provided. I want to know what part
each of you played in the information-gathering process upon
which the members of the Hydro Commission were asked to pass
this judgment.

Mr. McCallum: Well then, first look at page 30.

Mr. Shibley: Of the brief?

Mr. McCallum: Yes Sir.

Mr. Shibley: I think, Mr. Chairman, it is ~~very~~ safe
to provide everybody with the next four pages, 26 through to...
you are talking about August 4, 1972?

Mr. McCallum: Yes Sir.

Mr. Shibley: The docket re Hydro?

Mr. McCallum: Yes Sir.

Mr. Shibley: Yes. All right. So that we are now
looking at your August 4 docket re Hydro. Would you carry on?

Mr. McCallum: Thank you. This, to the best of my
recollection, is a note I dictated about what transpired on the
19th. ~~Sorry~~

(Mr. McCallum)

"In my discussion with the members of the Commission, it was not necessary to detail what was in it for the applicant."

That's Moog.

"Because that had been covered very fairly by Ken Candy. I did, however, touch on two points; (1) was the risk to Hydro arising out of the obligation to be imposed upon them,"

that means upon Hydro,

"in respect of foreign exchange?"

(2) I pointed out that the ~~applicant~~ applicant took the risk of borrowing the money to finance the construction; for example, \$40 million. If he was unable to borrow that money now for a fixed term of 30 years until the money he received in rent enabled him to pay it off, he might have to refinance once or twice or more during the 30-year term, and the price he would have to pay for money at that time would be his risk, subject always of course to Hydro bearing the obligation in respect of foreign exchange. The applicant was always stuck with the fact that he could not get more than \$4.92 a foot by way of rent, no matter what interest was demanded in subsequent years by the ~~lenders~~ lenders."

Mr. Shibley: Now, coming back to page 26 where you have your notes of that meeting also, would you carry on please with that document?

Mr. McCallum: Yes. The notes are not really ~~notes~~

Tape H 2080 follows

Sep. 5/73
10.35 to 10.40 am
fvk

(Mr. McCallum)

~~Some notes~~ notes, as my secretary has written at the top in an effort to be helpful, ~~from~~ from the meeting. Those notes were scrawled out by me prior to the meeting to use as aide-memoire if I was called upon to discuss the very thing that Ken Candy discussed with them. In other words, if I was called upon to give them my views of how this would relate to profits that were made, and so forth, that's what I had proposed to bring to their attention and to embellish but this was going to help my memory.

Mr. Shibley: May I ask you this, then, Mr. McCallum, was it brought to the attention of the commissioners that an allowance for construction profit of three per cent was an appropriate allowance?

Mr. McCallum: I don't remember if it was brought to the commission in the sense of saying it was an appropriate allowance.

Mr. Shibley: Was three per cent even mentioned as a construction profit?

Mr. McCallum: I don't recollect that.

Mr. Shibley: I see. You didn't mention it yourself?

Mr. McCallum: No, I did not.

Mr. Shibley: And neither did Mr. Candy?

Mr. McCallum: As I say, I don't remember what Mr. Candy did.

Mr. Shibley: All right then, what about the ~~the~~ \$1.2 million? ~~I'm~~ I'm sorry, that would be \$1.2 million profit.

Mr. McCallum: Anything that derived from that figure, sir, I just don't remember.

Mr. Shibley: I see. Was the figure of net profit \$432,000 a year discussed at that commission meeting?

Mr. McCallum: I ~~was~~ can't be certain that that figure was but a very considerable sum of money was certainly discussed. The thrust of what Mr. Candy was saying was something like this;

*If there appeared to be too much in it for Moog and we were

Sep. 5/73
10.35 to 10.40 am
fvk

(Mr. McCallum)

suspicious, he told them at that point that there was going to be too much in it for Moog on the basis of our preliminary calculations, then we ~~were~~ going to have to work with him and try and reduce this.

Mr. Shibley: Mr. McCallum, what's disturbing me is this. You've taken us to your docket memo of August 4. I remind you that you had ~~done~~ done some in-depth thinking on the question of what was in it for Moog as reflected in the July 17 memorandum, page 14 and following, ^{Was} any or all of that brought forward for consideration by the commissioners at the meeting of July 19?

^{that} ~~Mr.~~ Mr. McCallum: Yes, the general memory I have is the discussion revolved around trying to look at how much Moog was making in the sense of making money under the construction contract, making money ~~as~~ possibly under his sum of money allowed for maintenance and maybe on the financing, and it was very much on an "if these things are true" basis then we're ~~are~~ going to have to do something about it.

Mr. Shibley: That's what bothered me. Just stopping there for a moment, you see, the whole thrust of your thinking as reflected in the memorandum of July 17, whether it was ultimately completely accurate or not, ~~the~~ the thrust of your thinking in discussions with representatives of Hydro then was that Moog was getting a prohibitive return for his financial risk and that there should ~~be~~ be renegotiation. Isn't that so?

Mr. McCallum: Yes.

Mr. Shibley: What I'd like to know is why the commission, if it had been provided with that advice ^C on July 19, would have approved of entering into the contract before it entered upon the ~~any~~ renegotiating process that you seemed to be urging upon them.

Mr. McCallum: Well, they didn't, Mr. Shibley. ~~All~~ All the commission did on July 19 was say: "Get thee out and make a deal, if you can, with Mr. Moog". Now, what was intended was to ~~have~~ have a ~~Mr.~~ Mr. Candy made it clear, for instance, that in our examination ~~was~~


Sep. 5/73
10.35 to 10.40 am
fvk

Genest:

Mr. ~~Shibley~~ Let him finish, Mr. Shibley.

Mr. McCallum: ~~that we weren't using accurate figures;~~
that, tentatively, we were analys^Sing it in the ~~same~~ way of saying
that the deal might be too good for Mr. Moog and we'd ~~have~~ have
to do something about it, and we were given authority to go out,
make a proper analysis and, if you will look at the rest of these
pages you'll see that this represented ^{all} ~~you've seen so far~~
very preliminary figures, and when we got down to analysing it
with accurate figures, the situation changed.

Mr. Shibley: Mr. McCallum, you've been into these
deals quite regularly. Doesn't it affect your whole negotiating
posture to advise one developer of four that the commission has
approved of the entering into a contract with him, ~~which is the~~
~~wording of that meeting, and~~



(Tape H-2081 follows)

September 5, 1973
10.40 - 10.45 a.m.
M.R.

(Mr. Shibley)

~~entering into a contract with him~~, which is the wording of that minute of that meeting, and at a time when you are - it's still in your mind that the very basic terms of that contract should be renegotiated?

Mr. McCallum: No. The process of the proposal system involves exactly that technique. The process is to select a man. Now that man knows that when he is selected and that all that the commission were then doing formally was saying, "Okay. You're selected" ~~at~~ that point, you start to try and put the deal in writing. If you don't succeed in putting the deal in writing that you want and according to the way you want it, you just get rid of him and go on to another one. That is the whole idea of the proposal system.

Mr. Bullbrook: I realize that but ~~any~~

Mr. McCallum: It involves appointing one man, temporarily if you will, and he is entitled to know that "you are the man that we are going to do business with" but implicit in the whole proceeding is "but believe me if you don't do business with us and we can't reach a ~~some~~ proper agreement and iron these terms out that we are going to discuss about, then we're not obliged to you in any way; you are not a tenderer; we have not in any sense accepted you, we've just ~~any~~"

Mr. Allan: You are really saying "the man we hope to do business with."

Mr. McCallum: That's what it is. And, sir, that's all they did on the 19th. We went out then to see if we could put a deal in writing and that's exactly what we tried to do.

Mr. Bullbrook: Mr. Shibley, I speak for myself, but I want to know what the commission knew. Do you follow me?

~~Mr. McCallum~~ ²: That is what I want to know!

~~Mr. Bullbrook~~: I want to know what the commission knew. Mr. McCallum, having regard to your memorandum of the 17th and the fact that you brought the substance of that memorandum to their attention ~~any~~

September 5, 1973
10.40 - 10.45 a.m.
M.R.

Mr. Shibley: No, he didn't say that.

Mr. McCallum: I certainly didn't.

Mr. Shibley: Did you?

Mr. McCallum: I certainly didn't. I said the opposite. I said that ~~by~~

Mr. Bullbrook: Oh, I'm sorry.

Mr. McCallum: I said that Mr. Candy had presented, and I thought very fairly, the facts of what was in it for Moog. That's what my memo of August 4th says.

Mr. Bullbrook: Well, then I'll rephrase my question and say that the substance of your memorandum was brought to their attention?

Mr. McCallum: I'm not going to go away from the words, Mr. Bullbrook, because that's my best memory. ~~It~~ It was written then, at the time, my best memory is that he presented the facts of what was in it for Moog, to the commission at that time and made it, I am certain, clear to them, that we were both very suspicious at that point and, on our then figures, that he was getting too fat a deal.

Mr. Bullbrook: Did the commission give you any instructions about how fat a deal you could enter into?

Mr. McCallum: We told them that if they selected him we would go out and see what we could do to put that deal. We would analyze it properly and we would see then what we could do about bringing this deal in to line. And that's exactly what we subsequently did ~~and~~ The deal that we got differs, of course, a great deal from the sort of thing that is expressed in any of the figures that you've seen, that I've used, up to this point.

Because the deal that we got has a good many changes in it.

Mr. Bullbrook: Well, there is no doubt about that. I must say, having regard to my recollection, Mr. Chairman, of the evidence of the commissioners, but it's so long ago and I haven't

September 5, 1973
10.40 - 10.45 a.m.
M.R.

(Mr. Bullbrook)

reviewed the evidence recently ~~but~~ they didn't seem to understand the ingredients of the ultimate contract. ~~Now,~~

Mr. McCallum: Who didn't?

Mr. Bullbrook: The majority of the commissioners.

Mr. McCallum: Well, I wasn't here when they

were here but, you know, you are going to find out from me and you might as well find out now I didn't hear their evidence because I wasn't here. I've never read their evidence but one thing ~~that~~ that has been told me since is that, for instance, a man by the name of Danis, whom I met first then and who came here, and gave evidence, apparently indicated when he was here that they hadn't taken much part in it. You see, my memory is just the opposite; not ~~this~~ this meeting but at the subsequent meeting he asked so blooming many questions I thought he was a man by the name of Seguin, whom I had been told was a lawyer from Ottawa and who knew a great deal about this sort of thing and I could expect very good and close questioning from him.

So that he asked me so many questions that by the end of half an hour I was busy calling him Mr. Seguin. I just concluded he was Mr. Seguin.

Mr. Bullbrook: Well, you are going ahead on me a bit but I don't mind that.

Mr. McCallum: I guess I am.

Mr. Bullbrook: I don't mind that at all. We'll get to that. I'm sure you will, Mr. Shibley and I'm very pleased, frankly, to record that you've recorded that Mr. Danis did ask some questions, but can you help us about the dialogue that took place on the 19th? For example, the \$432,000 anticipated profit annually. Did they discuss that in any detail?

~~Mr. McCallum: I've told you that I can't recollect whether they used those figures ...~~

H-2082 to follow

(~~Mr. Bullbrook~~)

~~annually. Did they discuss that in any detail?~~

Mr. McCallum: I have told you that I can't recollect whether they used those figures or figures that I have referred to in earlier memos, but I can tell you that there was a clear discussion that there appeared to be a residue that was out of line ~~from~~^{for} what we expected, and ~~as~~^{to} the figure that was used by Mr. Candy I now can't recollect which one was used. As you can see, I have already used about four in the four memos that I have got. I ~~just~~ just don't remember what he used, but ^{as} you can see, I also thought that he fairly presented my idea of there being too much available at that time and on the basis of the analysis we had made ~~for~~ to that date.

Mr. Bullbrook: Well, we are going to know. I am finished. We are going to get to the ultimate question, I am sure.

Mr. Allan: Mr. Chairman, just before Mr. Shibley proceeds...

Mr. Chairman: Mr. Allan.

Mr. Allan: Could I be brought up to date as to who, representing the administration of Hydro, the administrative section, was at this meeting?

Mr. Shibley: Yes.

Mr. McCallum: I can try, but I may not do ^{it} accurately. You can get them..

Mr. Genest: I will get that in the minutes for you.

Mr. Allan: All right, fine.

Mr. Chairman: This ^{is} the 19th of July?

Mr. Shibley: I would like to ask why, Mr. Candy being an architect and you being the expert in the field of development agreements, and having made the analysis and given the advice to a number of Hydro officials, why was it left to Mr. Candy? It seems to me a curious choice to outline this aspect of the transaction to the Commissioners, rather than having you with all

Sept. 5/73
10:45-10:50 am
PLG

(Mr. Shibley)

your expertise and ability to express yourself clearly and completely, why was it left to Candy to present the case as to financial benefits to Moog as ~~was~~ opposed to yourself doing that?

Mr. McCallum: I don't really know. My memory of the matter is this; that I came into the room, sat up toward the end, the right-hand end of the table, and Candy sat right at the end. I wouldn't be at all surprised ~~if~~ they may have been discussing the matter before I got there because the Commission had been sitting for some hours before I got there. They continued to sit after I got there so they may have discussed many things that they didn't discuss in my presence at that time, Sir. But in any event, when I was there, Candy was asked to discuss what had been transpiring and it was, I guess^{ed}, and I still guess, thinking back on it, it was a continuation I suppose of things he had said to them before and it went right on. I don't think he was invited. I don't ever ~~remember~~ remember saying, "Now, Mr. Candy, will you tell us about the financial details." I don't think that is how it came about. In the course of his exposition, which was quite lengthy, and he talked about a great many aspects of the matter, I remarked on the ~~fact~~ fact that he had discussed these financial aspects, and so ~~when~~ when it came time for me to talk I neither was asked nor spent very much time, if any, on that particular aspect of the matter. Now there is a memorandum, if I ~~can~~ can find it.... You better take the Candy on the meeting. Take a look at Exhibit 85. He too made, obviously, some notes on the matter and here is what he wrote:

"I attended a Commission meeting this morning with Mr. Jim McCallum, Solicitor, at which time we ~~discussed~~ discussed the proposal of Canada Square with the Commission, recommending that we proceed with the writing of an agreement between the Commission and Canada ~~Square~~ Square for the construction of ~~a~~ new building, and that the new building be proceeded with on this basis. This was agreed to by the Commission and we were given the authority

(Mr. McCallum)

to proceed on this basis. I advised the Commission that Canada Square will obtain their interim financing up to an amount of \$40 million from the Bank of Montreal, and that Canada Square now advises that they anticipate all of their long-term financing will be obtained from ~~the~~ Switzerland."

Mr. Shibley: By the way, did you hear that?

Mr. McCallum: No I did not. I didn't hear that part. I did hear a part about the \$40 million from the Bank of Montreal, and I do remember saying ~~that~~ I don't think I had seen the letter at that time ~~that~~ that the letter that had been read to me I didn't think was at all satisfactory.

Mr. Shibley: But you don't remember him mentioning that all the long-term financing would be -- was anticipated to be from Switzerland?

Mr. McCallum: No. I have no recollection of that.

Mr. Shibley: All right. Would you carry on please.

Mr. McCallum: "Any additional costs involved at the time of repayment with respect of foreign exchange will be paid for by the Commission, and any reduction in ~~the~~ foreign exchange will be a credit to the Commission" I remember that there was quite a lengthy discussion on foreign exchange, and I played no part in it.

"I also advised that Canada Square have agreed that the building will be constructed at a minimum of \$34 per square foot and at a fixed rental of \$4.92 per square foot per year, but if the final cost of the building is less than \$34 per square foot the rent will be reduced to compensate."

Mr. Shibley: Now just stopping there, again, he was talking cost, not ~~appraisals~~ appraised value, to the Commissioners?

~~Mr. McCallum: He certainly was talking cost and he was talking cost remember in the light of the analysis of the financial people of Hydro, which was~~

Tape 2083 follows

H - 2083 - 1

Mr. McCallum: He

certainly was talking cost and he was talking cost, remember, in the light of the analysis of the financial people of Hydro which was expressed, for instance, in the April 10th report, and there is just no doubt, sir, there should be no doubt in your mind, that he was saying to the Commission cost - that would mean as it were Canada Square's cost - and that he understood that that was the thing that had been agreed to by Moog and that's certainly behind what you found, I think, some difficulty in accepting from me earlier, that I just don't believe Moog's statement here when there was a suggestion that Candy had made some other agreement with Moog, because this is the sort of thing he spoke about, very fairly, to the Commission. He made it clear to them that he understood that there was no more ~~on~~ this question of the rent going up to \$5.25: \$4.92 was the lid in any event, and that if the cost of that building was less than \$34 we were going to get a reduction in rent, and that's how Candy put it to them. That's my memory of it.

Mr. Shibley: Now while we're still on that meeting, I would like you to help me on another point. When Mr. Gathercole was giving his evidence he made a suggestion that another topic might have been raised at that meeting, and I want your memory on it because it is not terribly clear, I must tell you, but in Hansard at 46-3 he said:

"Mr. Chairman and members, I wish to correct a statement I made yesterday to the effect that I thought Mr. Roger Seguin, a member of the Commission, at a meeting of the Commission in July of 1972, may have raised the question of Mr. Moog's friendship with Mr. Davis as being a possible source of embarrassment.

"Since giving my evidence I have spoken to Mr. Seguin who has advised me that no such statement was ever made by him, and that in fact he did not know of any friendship between Moog

H = 2083 - 2

(Mr. Shibley)

and Mr. Davis until he read the press statements in April of this year", and so on.

Now what I am concerned about ~~here~~ is the reference here - and he had said at a Commission meeting in July of 72 - was the subject of the friendship between Mr. Moog and the Premier mentioned at all or by anyone at the meeting of July 19, 1972?

Mr. McCallum: During the time that I was in that meeting it was definitely never mentioned, and indeed - and I think I was there three times to that Commission - at any time that I was in front of that Commission and able to listen and participate in what they were doing, that topic was never mentioned.

Mr. Shibley: All right.

Mr. Chairman: Mr. McCallum, Mr. Allan asked for the names. Did you get the names, Mr. Allan?

Mr. Allan: Not yet, but they are getting them.

Mr. Genest: We are just getting it now.

Mr. Shibley: Do I take it from your last answer that you were not at the whole of the meeting of the 19th?

Mr. McCallum: I hoped you'd taken it from an earlier answer when I said that I certainly wasn't. They were meeting prior to my getting there and they continued to meet after I left and I suggested that they may well have talked about other matters when I wasn't present, sir.

Mr. Shibley: All right, thank you.

Mr. Chairman: Mr. McCallum; I would just like to ask one question. When you were present, did Mr. Sissons take much part in the presentation of the proposition?

Mr. McCallum: You know, that is a tough memory but ~~if~~ I will give you a general answer, Mr. Chairman, I will do the best I can. I found, in the times that I was there, that Mr. Sissons often expressed views, asked questions, and participated, and

Sept. 4, 1973
10.50-10.55 a.m.
M.F.

H - 2083 - 3

(Mr. McFallum)

on, I would think I would be safe in saying, all three times that I was there I was very conscious of Mr. Sissons' mind and presence in the room .

Mr. Chairman: Well I have been a little concerned that Mr. Candy seemed to have the carriage of this whole matter before the Commission rather than ~~the~~

Tape H = 2084 follows

Sept. 5/73
10:55 - 11:00 am.
M.S.

~~(Mr. McCallum)~~

~~in the room.~~

~~Mr. Chairman: Well, I have been a little~~
~~concerned that Mr. Candy seemed to have the carriage in this~~
~~matter before the Commission, rather than Mr. Sissons,~~
who is the immediate superior, I understand he is ~~Mr.~~ and who
had the responsibility for supplying accommodation for Hydro.
Why it was left with an architect rather than some senior
person in the financial field, I don't know.

Mr. McCallum: Well, I can't, I suppose, help
very much except to give you impressions. First is, that as you
found out from the first memo that came in front of you
yesterday, when Henry Sissons first spoke to me he told me
that I should deal with Ken Candy. But I noticed that when
the matters were discussed subsequently, it was clear that
Henry Sissons had a good knowledge of what was going on and he
must have been in contact, and I would suggest probably pretty
close contact, with Ken Candy on most of these matters throughout
the piece. That's the impression I had, and it's only an
impression because I wasn't present at ~~the~~ their talks.

Mr. Chairman: Thank you.

Mr. Shibley: I think we can move now to ---

Mr. Genest: I've got that information now,
Mr. Shibley; those present, Mr. Allan, were Mr. Gathercole, the
chairman ---

Mr. Allan: Well, I was just meaning the
administrative staff.

Mr. Genest: Oh. Mr. Gordon; Mr. Sissons; Mr.
Russell, the assistant general manager of personnel; Mr. Ireland,
the assistant general manager - marketing; Mr. Campbell, who was
representing Mr. Smith, who was absent. Mr. Campbell is from
the engineering branch. Mr. Gomer from the financial branch.
All the commissioners were there except Mr. Seguin. Mr. Seguin
was not there. And also Mr. Candy and ^{Mc}Mr. Callum, of course.

Sept. 5/73
10:55 - 11:00 am.
M.S.

Mr. Chairman: For the record, you are talking about the meeting of July 19?

Mr. Genest: The 19th. I think that's already in evidence, Mr. Chairman.

Mr. Shibley: Well then, Mr. McCallum, I think we can skip over to ---

Mr. McCallum: Just before we go, can I just give you two or three other things that I think will be helpful to you, sir?

Mr. Shibley: Yes, surely.

Mr. McCallum: I just would not like the members of the committee and yourself, sir, to ~~be~~ overlook the fact that again on page two of the Candy memorandum, or letter, of July 19, he mentions other matters which were discussed at that time. And then I think I ought perhaps just to point out again quickly, which is a part of the theme that I started with you yesterday; ~~we~~ take that memo of mine of July 19 and look at it for just a moment. See, the figures that I was using there have, of course as we got along, turned out to be quite wrong. That "\$3.02 if eight per cent" that you see written, ~~that~~ was based on a guess that there was 1,200,000 square feet. We know that the gross area of the building as it turned out is 1,305,800. That didn't make any difference to me at that time, but those inaccuracies are there. The profit of 45 cents clearly has changed, as you'll hear from me later on, and isn't correct.

Mr. Shibley: I intended to come back to that later, Mr. McCallum. I have a note to come back to it. So that if we could just carry on with the documentation. We realize that these are your preliminary thoughts. These were the thoughts as at the time of the meeting. I'd like to move along. On page 31, it just indicates that you had discussion with Mr. Sissons, so you were having communication with him. And then you had conversations with Candy from the lake. That's just to establish

Sept. 5/73
10:55 - 11:00 am.
M.S

(Mr. Shibley)

that you went on a holiday on August 30, I gather. Is that correct?

Mr. McCallum: I don't remember. That wasn't much of a holiday. I guess that must have been trying to steal a long weekend, but in any event, I called him from the lake.

Mr. Shibley: All right. Then, on page 32, there's reference to Bradshaw acting for Mr. Moog, was going to draw the agreements and hoped it would be ready for next Tuesday. This is as of August 4, again. ~~Memorandum~~ "There is therefore no need of a meeting with you today; Moog was too impatient to wait for another meeting." Now, the only interest I have in this memorandum, Mr. McCallum, is that here we have the actual formal documentation being undertaken as immediately as August 4, following the July 19 meeting of the Commission, without any indication from the material, and I would ask you to fill in if you can, that there was really any effort made to pursue negotiations with Canada Square upon the various items that were the subject of observation by you in your July 17 memorandum.

Tape H 2085 follows

Sep. 5/73
11.00 to 11.05 am
fvk

(Mr. Shibley)

~~observation by you is your duty - 27 memorandum~~
Mr. McCallum: August 4 - July 19 to August 4.

Mr. Shibley: You've ~~not~~ got a very limited period of time here and, as I ~~say~~ say, we're reaching a point ~~where~~ where you're going forward with the formal documentation and, really, I'd like to know whether there ^{ever} was any follow-up, if you like, upon the points that you were trying to impress upon the Hydro people that should be taken up with Mr. Moog.

Mr. McCallum: Yes, I'm sure there was. I didn't, until later on as you'll see. I think that I got into the act personally much more strenuously in the month of September and from there on. I don't have a specific memory of what Ken Candy was doing in that interval. You'll have his evidence and probably remember it though and I expect he was doing it.

Mr. ~~Shibley~~ Shibley: All right, let's go to page 33 then. This is a memo of August 18. You appear to have had a meeting with Mr. Moog on that day at his office.

Mr. McCallum: Yes.

Mr. Shibley: You talked about the type of building, about the zoning and, in the ~~the~~ third paragraph: "We talked about financial matters." He said ^{that} "He can't now get his money from Switzerland and is going to get ^{it} in the ~~3~~ States and it will cost him more than eight per cent."

Mr. McCallum, against the background of what was presented as an agreement of October, 1972, that Hydro would share in any savings of interest, should the cost of money be less ~~than~~ than eight per cent, I put it to you that it appears that as early as August 18, once it became apparent that he could not get his money from Switzerland and we now know that became apparent to him on August 7 ^A that it was recognized that ~~however~~ his money will cost him more than eight per cent. I'd like your explanation as to why there was any exercise at all, or any purpose, in the agreement to share in any savings?

Mr. McCallum: It's really not hard to explain. Mr. Moog, at no time throughout the whole of the course of the transactions, would ever tell us where he was getting his money. He would never tell us, right up to the very end, at what rate he was getting it, and, when you're dealing with an indefinite matter of that kind, and if you're going to take my skepticism and see how it works on things like ~~this~~ this, when Moog tells me that his money is going to cost him more than eight per cent I just don't accept it blindly, I say to myself: "Hmm, maybe he can get it for less, and, if he gets it for less I want to have a piece of the action." That's why it was kept ~~there~~ there.

Mr. Shibley: I see. All right.

~~Mr. Shibley: Before Mr. McCallum is done.~~

Mr. McCallum: ~~I~~ I had noticed, if you'll look about five lines from the bottom, that I have written, it says: "If he gets his money for eight per cent or less there will have to be a reduction in the rent from the figure of \$4.92."

Mr. Shibley: Four dollars and ninety-two cents, yes, I see.

Mr. McCallum: Not only that, he never said to me at any time that if the money is eight per cent or less there is going to be a reduction. What he said is, and we subsequently agreed to and all we ever talked to, "if you get your money at less than eight per cent that ~~is~~ is when we will be in operation." So, do_n't read that as it is written, read it as less than eight per cent, gentlemen, because that's the real meaning of it.

Mr. Shibley: Then can we pass right along to page 35 of the brief wherein there is a docket entry indicating a meeting between yourself and the chairman on August 23, 1972. I'm sorry, before we deal with that Mr. McCallum, and to keep it in chronological sequence, ~~the entry is~~

(Tape H-2086 follows)

September 5, 1973
11.05 - 11.10 a.m.
M.R.

(Mr. Shibley)

~~it is in evidence that you had a meeting with Mr. Moog and Mr. Bradshaw on August 3rd, at which instructions issued as to the documentation~~ ^{that} ~~Mr. Bradshaw was to initiate~~ Is that not so?

Mr. McCallum: I don't know. Did you find something in my material?

Mr. Shibley: I'm sorry, and I want to be completely accurate on it; I think you were intended to be at the meeting. There is a hint somewhere that you may not have made it.

Mr. McCallum: That's why I'm ~~long~~

Mr. Shibley: All right.

Mr. McCallum: ^(whistling) ~~just~~ through my teeth. I don't remember it, sir, unless you can help me ~~long~~

Mr. Shibley: No. My ~~own~~ memory at the moment is you were expected to be there but my vague recollection is that you could not be there.

Mr. McCallum: That's sort of the way I have it in my mind, too.

Mr. Shibley: All right. But, in any event, you have no recollection of such a meeting at which instructions were issued as to the documentation?

Mr. McCallum: No, I haven't.

Mr. Shibley: Do you remember it came up in the context of the provincial guarantee being part of Bradshaw's first draft of August 25th? He said that was part of the instruction he got on August 3 when he had a meeting with Mr. Moog and Mr. Candy, and the more I think about it, the more I'm sure that you were intended to be but were not there.

Mr. McCallum: I think so and maybe that memo that you do ~~not~~ [?] have in here on Page 32 is the very sort of confirmation that you are ~~looking for~~.

September 5, 1973
11.05 - 11.10 a.m.
M.R.

Mr. Shibley: All right.

Mr. McCallum: "That I wasn't there.

I have no memory of that, sir.

Mr. Bullbrook: Mr. Shibley, before you proceed, could you relate back to Page 33 and if you could, what I'm interested in is - and I accept Mr. McCallum's evidence without reservation that when we look at the lines to which he ultimately referred, that if he gets his money for eight per cent or less, there will have to be a reduction of the rent from the figure of \$4.92 as it should read; we're to read that that if he gets his money at less than eight per cent according to the evidence ^{of} ~~Mr. McCallum~~ ^{Mr. Shibley}, I'm very much interested ~~in~~ when the negotiations began, because as I read the evidence right now, at that meeting Hydro and their advisers are not content at the profit ratio at eight per cent.

In other words, I would think that it - and I want to reinforce that I accept Mr. McCallum's interpretation - but I wish it wasn't the interpretation. I wish it meant what it said. That they had started to discuss ~~at~~ at that time that ~~if~~ even if he gets his money at eight per cent there is going to have to be a reduction. What I'm attempting to convey, Mr. Chairman, to our counsel is: I'm interesting interested in finding out when the negotiations started. As of this date, August 18th, to the best of my knowledge from the evidence, Mr. McCallum has no further information except other than what he had when he did his memorandum originally, and I would have thought that the negotiations would start to say, "We think your profit is a little too high, even at eight per cent". So I'm wondering if we could explore that?

Mr. McCallum: Well, you'll probably have to explore it in greater depth with Ken ~~Senyex~~ Candy ~~400~~

Mr. Bullbrook: I see.

September 5, 1973
11.05 - 11.10 a.m.
M.R.


Mr. McCallum:

because in that you'll find out he was doing it; but look, Mr. Bullbrook, let me make this clear; the Hydro fear of the man making too much for my fear, to be personal about it, was not really directed to that eight per cent. I had other thoughts in mind, if you'll remember, from those memos. The rate of interest at eight per cent I found very attractive with my knowledge of interest rates in the market at that time; very attractive. So I was pleased and almost sceptical that he could even get it for eight per cent.

Mr. Bullbrook: I realize that but if you bear with me for a moment - I must say that this ^{is} kind of a deflection from my main thought, I realize that eight per cent would make you happy.

Mr. McCallum: Sure.

Mr. Bullbrook: But, of course, as I glean the evidence, the most fundamental consideration in this whole transaction, as far as profitability ^(availability) is concerned, is the financing rate over that length of time. As Moog himself has admitted, one-eighth of one point is a tremendously significant feature. So that I'm interested, Mr. McCallum, in the fact that you were originally disposed to feel that at eight per cent



H - 2087 - 1

(Mr. Bullbrook)

~~Mr. McCallum, in the fact that you were originally disposed to feel that at eight per cent there might well be an undue profit to the developer.~~

Mr. McCallum: For reasons other than the eight per cent, really. You will remember that I was busy concerning myself with what you would call a windfall off the top at that moment. The money that you can make on the cost of your money wasn't really figuring so large in my thinking. I knew it was there. What was going on in my mind was "Gee, how would it be if the man can borrow" as I was then saying, "\$35 million and put the building up for \$30 million?" That's a lot of money right off the top. So that was a thought I had.

Then I was busy hitting away at Candy and his people saying "Is there money in here for him on this maintenance? Is that a possible thing?" You will remember I tried to describe - and Mr. Shibley has given you the three places I was then looking at for money. Now I wasn't then looking at this; we looked at it subsequently when we got down to the place where we were talking a little more common sense instead of people saying "I don't know where I am going to get ^{my} money." I don't know, I haven't got it yet." That didn't figure very large in our thoughts at that moment; it did later as you will see.

Mr. Shibley: I was taking you to ~~-----~~

Mr. Gaunt: Mr. Chairman?

Mr. Chairman: Mr. Gaunt?

Mr. Gaunt: May I pose a question at this point? I am wondering ~~if~~ Mr. McCallum - and this results from your comment that you couldn't find out the source of the money or the interest rate at which it was going to be borrowed - is this in your experience common to be confronted with that sort of problem at this particular stage, just prior to the negotiation stage?

H - 2087 - 2

Mr. McCallum: Yes, it certainly is.

Mr. Gaunt: So there wasn't anything unusual in your view about not having that information?

Mr. McCallum: No, not the least bit. You will find, Mr. Gaunt, that in this stage of this sort of a transaction people have to go to their financial people and say 'if I get a deal with so and so, and if I get it on these terms, will you lend me \$45 million?' Well you know they don't play ifs when they are talking about \$45 million, and the most you can get is somebody saying 'Well, we'll certainly entertain it, we'll certainly think about it.' And you make your bet on that and then go and try and find your money. That's the way it is done. You don't get commitments.

Mr. Shibley: Mr. McCallum, while we're on that point, as I mentioned yesterday, it is clear that Mr. Moog was thinking in terms of \$50 million for some period of time, And even if the rental rate was to be fixed at \$4.92, is it fair to infer from that that even if this building had cost as much as \$50 million, or the cost of Mr. Moog's money was more than eight per cent, because he had committed to provide the building at a rental of \$4.92, he fully expected to be able to do so at a profit to himself?

Mr. McCallum: I would assume so, but there again you have got me trying to look into Mr. Moog's mind. It is not a task I like, but you know ~~that~~---

Mr. Shibley: I am not asking you to do that but I am wondering how much leeway is in this transaction for Mr. Moog, in the sense that if he considere~~d~~d that he could expend as much as \$50 million, or incur a cost of money over eight per cent, and still live with \$4.92, when he ultimately got his money at eight per cent and was committed to a building of \$45 million, does that assist us in trying to understand what was in it ~~for~~ for Moog, using your terms?

H - 2087 - 3

Mr. McCallum: No, I don't think so at all.

Mr. Shibley: I see. All right.

Mr. Allan: Mr. Chairman, would it be fair to ask Mr. McCallum if he really thought that Mr. Moog ever expected that building to cost \$50 million?

Mr. McCallum: No, I said yesterday, if you remember, emphatically, I never heard him mention the figure at any time, the ~~\$\$\$MILLI~~ \$50 million, ~~and~~ I am betting, just as much as Mr. Allan would bet and a dollar more, that he never had it in his mind that it was going to cost that. \$34 a foot multiplied by anything that we were then using for the gross area of the building doesn't get anywhere near \$50 million, ~~and~~ I don't know anybody that goes to a deal saying "Boy, I am such a benefactor, I am figuring this deal in such a way I am going to put in an extra five or six million dollars of my own." No way.

Mr. Shibley: Well, I wanted to ~~-----~~

Mr. Bullbrook: In response, to reverse your question, if he was -- Mr. Shibley's question was of course if he was able ~~to finance or even to contemplate amortizing an obligation of ---~~

Tape H - 2088 follows

Sept. 5/73
11:15-11:20 am
PLG

(Mr. Bullbrook)

~~Mr. Shibley's question is because of course, if he was able~~
to finance or even contemplate amortizing an obligation of \$50 million over 30 years at a base rate of \$4.92, that is the question. If he was able to anticipate that and that is his evidence...

Mr. McCallum: But..

Mr. Bullbrook: Wait a minute, Mr. McCallum. Please bear with me. Your response is that you thought it would never cost \$50 million.

Mr. McCallum: That's right.

Mr. Bullbrook: ~~That~~ ^{deferentially} begs the questions that was put to you.

Mr. McCallum: Well, let me then ^{say} ~~use~~ the other side. The very purpose of the examination that you have seen in my memos so far was to close the very gap you are talking about. What you are now saying is, supposing he could borrow on Hydro's covenant, \$50 million, and spend less than that to build the building. That is precisely the gap we moved to close and was the first one that we became concerned of. It is the one I call profit off the top.

Mr. Bullbrook: Right. Mr. McCallum, the essential ingredient is that this committee will never leave here, because of the posture of Canada Square, ~~he~~ knowing exactly what ~~the~~ that building is going to cost. This committee won't, and I put it to you, neither will the Ontario Hydro Electric Power Commission ever know exactly, because Canada Square throughout have taken the position that that is their own business. Now, I think that what Mr. Shibley put, Mr. Chairman, is a very important, vital and valid consideration. Whether he bills it for \$50 million or not, you have his own evidence that he was prepared to amortize that obligation, having already committed himself to a base rate of \$4.92. Now you did a good job subsequently...

Mr. McCallum: No, but, there is one other thing that I am not ^{about} sure. Of course he may have said that. I wasn't in the room when he said it, but one of the things they did—
~~We~~ We did two things; first was, we put a limit on his borrowings and he can't borrow more than \$45 million.

Mr. Bullbrook: That again..

Mr. Shibley: No, you are missing the point.

Mr. Bullbrook: That is n't the point.

Mr. McCallum: The ~~second~~ second thing is...

Mr. Shibley: Listen, to him.

Mr. McCallum: All right. I am listening.

Mr. Bullbrook: The point is that in his mind, according to his evidence, after committing himself, unequivocally to \$.92 return over the 30-year period, he felt he could amortize that capital obligation.

Mr. McCallum: Good for him. He was never going to have the obligation. That is what I keep saying to you.

Mr. Bullbrook: We must understand each other, Mr. McCallum and myself.

Mr. McCallum: Yes, because I guess we don't.

Mr. Bullbrook: Well, these comments Mr. McCallum are in no way intended to either peripherally or directly cast any doubt on the job that you did for Hydro.

Mr. McCallum: No, I realize that. I think ^{it is just that} ~~he is~~ ^{you} ~~it is my fault~~, I think.
~~I'm not talking about~~ understanding ^{you} it is my fault, I think.

Mr. Bullbrook: Well it is what I understand Mr. Shibley's question to be.

Mr. McCallum: Well then, I don't understand either of you and I will try very hard. Let's go around the Mulberry tree once more and I will see if I can tune in.

Mr. Bullbrook: The evidence, then, of Mr. Moog is that at least for a part of the time and just about contemporaneous with this time, that there was a thought of borrowing \$50 million. \$50 million. And that he had committed himself to a base rate

Sept. 5/73
11:15-11:20 am
PLG

(Mr. Bullbrook)

of \$4.92 to Hydro, so I think it follows as a matter of logic that he ~~is~~⁸⁵ a sophisticated business man, must have been able in his own mind, to work out the fact that at \$4.92 he could amortize that \$50 million. Now if he only ~~has~~ has to borrow \$45 million and amortize that at \$4.92, it leads us to the conclusion that somewhere along the line in that \$4.92 is a profit availability perhaps of \$5 million and this is the exercise that we are getting into.

Mr. McCallum: No. It may be an interest rate. He might well have had in his mind that he could borrow \$50 million, pay interest at 6 1/2 per cent and amortize it off at \$4.92. You can pay more at a ~~lesser~~ lesser interest rate.

Mr. Bullbrook: Then we as a committee will ~~have~~ have to evaluate whether at the time he was thinking of \$50 million he was thinking at 6 1/2 per cent.

Mr. McCallum: Sure you will.

Mr. Bullbrook: I want to ask one more question, if I may, because Mr. Gaunt did get a response. The response in connection with his ~~question~~ question, which I think very probative, was that at this stage of the negotiation it was normal in development matters of this nature for the owner not to have the developer disclose the interest rate because in many circumstances the interest rate hasn't been fixed. I want to put it to you, at the time of the execution of the final contract in connection with proposals of this nature, is it normal for the owner not to know the financing costs, or the interest rate ~~is~~ rather, of the developer, at the time of the final contract?

Mr. McCallum: I can't think that there would be such a thing as normal but I can tell you that many financial institutions -- I will have to see if I can help you -- many financial

Tape H 2089 follows



September 5, 1973
11.20 - 11.25 a.m.
M.R.

(Mr. McCallum)

~~Many financial institutions I'd have to ask if I can~~
~~help you. Many financial~~ institutions will not give a binding commitment until the deal is made.

Mr. Bullbrook: All right. Well, that again, sir, is I think readily understood even by lay people. Do you understand what I'm saying? It goes without saying that Royal Trust is not going to commit themselves to a developer until they know what the covenant on the lease is going to be. But I ask you, sir, as an expert in this, is it normal and your answer might be there is no normal, but is it normal at the time of the execution of the final contract between the owner and the developer that the owner doesn't know the cost of financing, or the interest ^{rate} rather, of the developer?

Mr. McCallum: No.

Mr. Bullbrook: I would think it is not normal.

Mr. McCallum: I suppose it's the "normal" that's hurting me and you've quite correctly appreciated the difficulty in answering the question because you've used the word normal. You see, if a man has a commitment, then I think it would be abnormal not to reveal it. If the man has no commitment, he can't reveal what he hasn't got. And I'm just pushed in between those two pillars, aren't I? I can't help this.

Mr. Bullbrook: I want to carry this forward.

If he doesn't have a commitment, is it normal for the owner to enter into the contract without the developer being able to fulfill his obligation?

Mr. McCallum: Oh, sure, because the owner then protects himself. The owner hasn't lost anything. The owner says "I'm going to get you to build a building" and if the developer comes along and can't build it, what has the owner lost but some time?

Mr. Shibley: He protects himself with a performance bond.

September 5, 1973
11.20 - 11.25 a.m.
M.R.

Mr. McCallum: Or other ways.

Mr. Shibley: In this case the difficulty emanated from the fact that there was a \$2 million built-in protection but that was the limit because there is no other assets in Canada Square.

Mr. McCallum: No.

Mr. Shibley: But limited assets.

Mr. McCallum: No, sir, that wouldn't be so.

The land and the construction as it went up was an asset ~~for~~

Mr. Shibley: Well, the land belongs to Hydro.

Mr. McCallum: Yes, sir, but that land then under this deal became available to them for borrowing under the constraints that we've mentioned several times.

Mr. Shibley: May I ask, you, Mr. McCallum, when did Hydro first know of what the permanent financing arrangements were that were made by Canada Square?

Mr. McCallum: Well, they would have to speak for themselves. I don't think I knew until this inquiry was announced.

Mr. Shibley: Exactly.

Mr. McCallum: Exactly.

Mr. Shibley: I understand that's the position of everyone within Hydro, that when this inquiry was already under way, Mr. Moog had yet to tell them about his permanent financing arrangements.

Mr. McCallum: Yes, I think that's so, sir.

Mr. Shibley: Yes, now ^{to follow in} ~~do you know that the~~ pursuit of Bullbrook's questioning ~~see~~

Mr. McCallum: Mm-mmh.

Mr. Shibley: ~~see~~ is that normal?

Mr. McCallum: Yes. The agreement contemplated that very thing.

Mr. Shibley: I see.

September 5, 1973
11.20 - 11.25 a.m.
M.R.

Mr. McCallum: The agreement has ~~been~~

Mr. Shibley: I am not talking about the agreement because the agreement may contain things that are unusual.

Mr. McCallum: You asked me if it's normal and I said yes and this agreement contemplated that very thing.

Mr. Shibley: I see.

Mr. Allan: Mr. Chairman, could I just ask one question?

Mr. Chairman: Mr. Allan.

Mr. Allan: Forgive me. Is it usual in a proposal system to require ^a performance bond? Having regard for a lease-back ~~lease-back~~ or a lease purchase agreement, because the building after all is owned by the contractors?

Mr. McCallum: Under circumstances such as this, it might give some comfort, but I think that it wouldn't be usual at all. It isn't needed, for instance, in my view, here. We started off asking for it, Mr. Allan, and I soon concluded ~~that~~ a couple of things - the cost, if you could get one at all, was utterly too much it seemed to me, and there was some doubt whether you could get it at all and it became clear that what we were doing here was able to, since we weren't putting up any money at any time, and since we were making certain that they couldn't use our asset called the land except to put brick and mortar on there that they paid for, that we were in a position to take over at any time and complete that.

Mr. Shibley: Mr. McCallum, you have been involved in undertakings where, by reason of bankruptcy or ~~the~~ otherwise, the owner has had to take over completion of the building ...

Mr. McCallum: Yes.

Mr. Shibley: And you well know that a five per cent increment in cost is no where near the additional cost to the owner ~~of~~ in those circumstances. Isn't that so?

Mr. McCallum: Well, but that's ...

Mr. Shibley: Will you give me an answer to that and then go on with your

H-2090 to follow

Sep. 5/73
11.20 to 11.25 am
fvk

(Mr. Shibley)

~~Mr. McCallum: But that's~~

~~Mr. Shibley: Will you give me an answer to that and~~

~~then go on~~ yes or no to that.

Mr. McCallum: Mr. Shibley, you can't give me a broad general question and say, ¹⁶give me a yes or no. Under the question that you asked, I have to know, for instances, are the ~~the~~ circumstances you're referring to ones where the builder is being paid as the building goes up? Is he getting progress advances? That's what gives the big problem in ~~bankruptcies~~ bankruptcies and mechanics' liens.

Mr. Shibley: In this particular arrangement what you really have is \$2 million worth of security ~~and~~ against the bankruptcy of the developer. Is that correct?

Mr. McCallum: I have \$2 million up as security and I have not a nickel spent. In other words, I have his \$2 million.

Mr. Shibley: I'm saying that's the limit of your security. He is entitled to encumber the property to ~~encum~~ everything beyond \$2 million.

Mr. McCallum: Oh no, only after he's then ~~got~~ got a take-out.

Mr. Shibley: I'm saying he's entitled to encumber the property ~~beyond~~ beyond the \$2 million.

Mr. McCallum: Yes, he's entitled to encumber the property beyond the \$2 million provided he's got a proper take-out so that we don't ~~be~~ get stuck in there. He has his permanent financing and he can't put an interim mortgage on ~~that~~ there at all until first of all we ~~know~~ have proof that he has a binding first mortgage commitment. That puts us in a delightful position.

Mr. Shibley: Mr. McCallum, all I'm saying is this. \$2 million is less than five per cent of this project's cost. Is that right?

Mr. McCallum: & Yes, arithmetically that's true.

Mr. Shibley: Yes. And in the event of a default,

Sep. 5/73
11.20 to 11.25 am
fvk

(Mr. Shibley)

and I'm not talking about Canada Square, the general experience is that when bonding companies, for example, have to go in on a performance bond to complete an incompleted building, the cost, the additional cost incurred in that circumstance exceeds five per cent. That's the general experience.

Mr. McCallum: I don't have that experience.

Mr. Shibley: I'm surprised to hear you say that because your firm is so prominent in the bankruptcy field.

Mr. McCallum: Well, I just don't have ~~the~~ that experience.

Mr. Shibley: All right, then let's go back to the documentation then. I'd like to look at page 35. You had a meeting at the chairman's office on August 23. Would you please tell this committee the subjects that were discussed and the content of the discussion with the chairman on that date?

Mr. McCallum: It's very difficult. I've looked and looked at that memorandum. I've talked to Mr. Genest and I've talked to Mr. Houser and I've done everything I can to try and find a peg ~~in~~ to hang my memory on as to what transpired. I have no direct recollection. I believe, however, that we discussed a pending press release and that Mr. Gathercole was concerned about a press release that he ~~wanted~~ wanted to put out. That's number one. And he asked me about various aspects of that. I have a much vaguer recollection, and I suppose maybe this is a conclusion that I'm coming to now that we had some discussion about the possible profits, or what was in it for Moog but, Mr. Shibley, I've done my level best because I anticipated your question. I did it as recently again as last night and I have no better recollection than that. It isn't that I wouldn't tell you, I just tell you I haven't got a recollection.

Mr. Shibley: Mr. McCallum, I'm going to give you some background which, hopefully, may refresh your memory. I don't know that it will. On August 21, Mr. Smith wrote to Mr.

Sep. 5/73
11.20 to 11.25 am
fvk

(Mr. Shibley)

Seguin. On August 22, Mr. Candy met with you and there is a note in Mr. Moog's diary of Candy.

Mr. McCallum: ~~Just~~ ^{again. On} Just say that ~~on~~ August 21, Smith to Seguin.

Mr. Shibley: Mr. Smith wrote to Seguin.

Mr. McCallum: Yes, now what was the next one?

Mr. Shibley: On August 22, ~~Mr~~ Seguin received that letter.

Mr. McCallum: Seguin got letter, yes.

Mr. Shibley: And Mr. Candy also met with you on

August 22.

Mr. McCallum: Yes.

Mr. Shibley: And on August 23, I'm just looking at my chronology here, the events of that day, ~~was to search everything~~
~~memory, that's the day Mr. Singer was retained and it was about~~

(Tape H-2091 follows)

Sept. 5/73
11:25 - 11:30 am.
M.S.(Mr. Shibley)

~~refresh~~ refresh everybody's memory. That's the day Mr. Singer was retained and it was first raised that he would have an ongoing retainer that was made firm in November. And on that same day you had your meeting with the chairman. The press release which you've referenced was August 25. Now, what I'd like to know is whether you had any discussion with Mr. Gathercole. I might say also that on August 25 there is a document, suggested answers to questions, that was part of the productions of Hydro. I want to know whether, in the conversation you had with Mr. Gathercole on August 23, it was any part of that discussion that there had been ^{the} complaints of Ellis-Don coming to the attention of Hydro, that they were concerned to prepare answers to any questions that might evolve and so on?

Mr. McCallum: Definitely not. I wasn't aware of that matter until after this enquiry opened.

Mr. Shibley: All right. So that, so far as the conversations you had with Mr. Gathercole on August 23, that did not alert you to any circumstance of concern within Hydro, in the period in question?

Mr. McCallum: Definitely not.

Mr. Shibley: Can you add anything then to your recollection of what went on in the discussions with Mr. Gathercole on August 23?

Mr. McCallum: Nothing to what I've said.

Mr. Shibley: Well, then, we'll go on, Mr. McCallum. On page 36 is a letter of Canada Square. Incidentally, I'll be dealing with this letter with Hanscomb Roy's representative.

Mr. McCallum: When does the chairman intend to give us a recess?

Mr. Chairman: When you request it. Are you now requesting it?

Mr. McCallum: I now so do.

~~XX~~

H 2091 - 2

Sept. 5/73
11:25 - 11:30 am.
M.S.

The committee adjourned for a brief recess

t 11:33 o'clock, a.m.

Tape H 2092 follows

H - 2092 - 1

The committee resumed at 11:45 o'clock a.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order.

Mr. Shibley: Page 36 of the exhibit book, and this is a letter from Canada Square which starts off "referencing the agreement made the 24th of August between you and us relating to construction by us and leasing of your new head office building" I think he is talking about the ~~new~~ draft agreement.

Mr. McCallum: Wait until I get tuned in now.

Mr. Genest: What page, Mr. Shibley?

Mr. Shibley: Page 36 of the brief, "unless the context ~~*****~~ requires and so on."

"Following completion of the construction of the building, the building architect shall certify to Hydro and Canada Square the cost or value, whichever is the greater, of the useable office space contained in the building".

Now you have some note there.

Mr. McCallum: Yes

Mr. Shibley: What does that mean?

Mr. McCallum: I have the words "in the market".

Mr. Shibley: I see. And a question mark to the side. I realize this scheme was never implemented but this was the then thinking of Canada Square I gather. Is that correct?

Mr. McCallum: Yes, I think that's true.

Mr. Shibley: Now then coming down it says:

"In calculating the costs or value of the building there shall be included:

"(a) all payments to sub-contractors engaged in the construction and so on".

For example, you have got a note "sewerage imposts, moving of services construction", and then

"(b) costs of labour and services", and to the left would you please explain your note?

H - 2092 - 2

Mr. McCallum: What have I got?

Mr. Shibley: Kickbacks.

Mr. McCallum: Kickbacks. Well I don't suppose to

this audience I have to explain kickbacks and I don't even know why you want to, but if you must, I was conscious of the fact that some contractors are able to arrange for payment of a certain sum of money which they call their cost, and it isn't their true cost.

Mr. Shibley: Now MR. McCallum, having regard for the fact that Canada Square take the position that they are not even going to provide their costs to Hydro, including the cost of sub-contracts, cost of material, etc., ~~what effect~~ - what effect does that have upon the ability of Hydro to ascertain whether or not there are any kickbacks?

Mr. McCallum: None. It doesn't any longer matter under the present formula.


Mr. Shibley: Well we'll get to the present formula, but when you say that, you mean that because the cost concept was abandoned then if Mr. Moog is getting any kickbacks it doesn't matter because it is going on an appraised value formula?

Mr. McCallum: That's what I mean, but I want to be just a little more particular if I may. I say that when you are not estimating the cost to Moog, you are not worried about such things as kickbacks. If you are estimating the cost to Moog, you like to know the true cost to Moog. Then you start worrying about things like that.

Mr. Shibley: Exactly. And that is why it was a matter for concern on your part on August 24, 72?

Mr. McCallum: Because I thought ~~we~~ were dealing with the true cost to Moog.

Mr. Shibley: That's right. All right. Then he sets out a number of things. As I say, I am going to be dealing with a lot of this with Mr. Rasmussen of Hanscomb Roy, so I won't exercise you about it, but I notice under (d) you have got



H - 2092 - 3

(Mr. Shibley)

circled "royalties". Is there any reason for that or did you consider it or what?

Mr. McCallum: Yes, I considered it and said to myself, "blank cheque". Here is somebody saying ~~that~~ it wasn't quite the way you read it, I think, sir. #

~~Mr. Shibley~~

~~Mr. Shibley~~: What this proposal was saying in calculating the costs of the building there shall be included (d) - among other things - royalties.

Mr. Shibley: Yes.

Mr. McCallum: Well I underlined it and said to myself "look out now", that's how far I went. It was a thing that I didn't want to forget that I didn't like, unexplained and that wasn't anything that I was going to accept without further explanation.

Mr. Shibley: You used the expression "blank cheque" once before, or it has been used once before in the context of this exhibit when it was otherwise introduced. In the overall had Hydro agreed to this type of arrangement it would have amounted to a ~~blank~~ blank cheque.

Mr. McCallum: Yes, or a cheque for an awful lot of money. No, I think you are right, blank cheque.

Mr. Shibley: In fact it was never the agreement?

Mr. McCallum: No, quickly and immediately it was never accepted.

Mr. Shibley: Right. This was another try-on I gather by Canada Square?

MR. McCallum: Oh I am sure it was.

Tape H - 2093 follows

~~Mr. McCallum: No. Succinctly and immediately.~~

~~Never....~~

~~Mr. Shibley: This ^{wasn't} ~~was~~ another try on I gather by~~
~~Canada Square.~~

~~Mr. McCallum: Oh, I am sure it wasn't.~~

Mr. Shibley: Now the ^(only) other part of ~~the~~ that document under "G", they were claiming for, in addition, 10 per cent of the cost of the building for overhead and 10 per cent for construction profit. Those figures, I take it, are fairly to be compared with your ~~g~~ figure of 3 per cent for each of those items?

Mr. McCallum: I ~~am~~ guess they are. Certainly the figures didn't appeal to me in the ~~same~~ context in which they were given because they were trying to say, and I think the whole of that paragraph has to be looked at in the sense of their saying, when you are calculating cost we, Canada Square, are going to define it and we are going to define it as including 10 per cent and 10 per cent whether it is ever spent or it isn't spent. I don't have to say much more than that. We weren't agreeing to that.

Mr. Shibley: No. Can I take you then to page 38 of the brief.

Mr. McCallum: I am sorry, sir, somebody else was asking a question.

Mr. ~~Chairman~~ ~~Hodgson~~ Glen Hodgson.

Mr. R.G. Hodgson: Is it the same as for item 3 of G?

Mr. Shibley: Royalties for features. G.3.

Mr. McCallum: Well, yes. I didn't really then understand what was ~~was~~ meant by it and I must say Mr. Hodgson, I didn't spend very long thinking about it. The whole document didn't appeal to me at all. I can't say that I then thought and think and have heard and thought since about royalties. I can't say so.

Mr. Shibley: I'd like to go on then to page 38 of the brief. I gather you had a discussion with Moog on this day?

Mr. McCallum: No.

Mr. Shibley: I am sorry. Well, how did this ~~→~~

Mr. McCallum: That memorandum is a memorandum that was taken down by my ~~■~~ secretary and represents her notes, which she put in typewritten form for me of a statement which she said was made to her by Moog on that date.

Mr. Shibley: Made to her by Moog?

Mr. McCallum: Yes, Sir.

Mr. Shibley: Now would you please go through the note then and give us the benefit of your comments?

Mr. McCallum: Well, according to her notes, she says that Moog said to her:

'We have to complete the agreement this week. I told him' ~~↳~~ this is my secretary ~~→~~

Mr. Shibley: This is on August 28 incidentia^{lly}. In case ~~↳~~ there is a date given to the left. It may be hidden by the other ~~→~~

Mr. McCallum: That is her writing again. I don't know.

Mr. Shibley: So that, according to this, on August 28, 1972, Moog had called and said that he had to ~~have~~ have a complete agreement that week. Would you carry on please?

Mr. McCallum: Yes. And she says:

'I told him that except for a few hours on Tuesday, I did not think you would be in this week, at which he nearly fainted.' Well, you ^{have} got to know her, bless her. That is the kind of language she uses. It says:

'We must get the agreement done this week without fail or all his building plans will be set back. Also asked me who, in this firm, would be dealing with the road closing.' He went on apparently to say:

Sept. 5/73
11:50-11:55 am
PLG

(Mr. McCallum)


'You had suggested you might get someone here to do it but if you can't then he would suggest Vernon Singer because he would be good to do the work politically, too. Then Mr. Candy called with the same thought. Wants to meet with you and Moog. Moog didn't mention having Candy at the meeting.'

Mr. Shibley: Now then, did you have any discussion with Moog or anyone else about the ~~suggestion~~ suggestion that Mr. Singer be retained in connection with the road closing, I gather is what is referenced here, isn't it? What I want to make clear is, I gather that the suggestion by Mr. Moog that Mr. Singer be retained was a suggestion that Mr. Singer be retained with respect to the closing of the road. It was not a suggestion that he be retained to handle the whole Hydro deal was it?

Mr. McCallum: Well, I don't know but I read it exactly the same way you do, that if this ever happened then he must have been suggesting that maybe Mr. Singer would be retained to act on the closing of the road. Certainly there is nothing in there that I read that suggests to me that he was going to be hired for the whole Hydro deal.

Mr. Shibley: Nor was it -- I am sorry. Was it ever suggested to you, in any other way, that Mr. Singer should be retained to carry on with

Tape H 2094 follows



Sept. 5/73
11:55 - 12:00 pm.
M.S.

(Mr. Shibley)

~~...in any other way that Mr. Singer should be retained to carry on with~~ the Hydro end of the transaction, in your absence?

Mr. McCallum: No, no. I don't remember any such thing.

Mr. Shibley: Now then, did you ever discuss this with Mr. Candy?

Mr. McCallum: What?

Mr. Shibley: The retainer of Mr. Singer.

Mr. McCallum: No, I never did. Never.

Mr. Shibley: What is the name of your secretary?

Mr. McCallum: Edith Plummer. Not the one that does the plumbing. P-l-u-m-m-e-r, like in Christopher.

Mr. Allan: I thought he was going to ask for her telephone number.

Mr. Shibley: Did you ever discuss it with her?
The memorandum.

Mr. McCallum: Uh-huh. A couple of days ago when I saw her I said, "Boy, that's likely to get you a visit!"

Mr. Allan: Did she nearly faint?

Mr. McCallum: I think she did!

Mr. Shibley: Well, without having her pay us a visit, did she expand at all upon what was in the conversation?

Mr. McCallum: No. She has no memory of the matter at all, other than this. I think she was very surprised to find that it was here and in the file. And I'll betcha she wishes it wasn't, but there it is.

Mr. Deans: A lot of people feel that way.

Mr. Shibley: We'll have a party when this is all over, to which the requisite admission price is that people are in that category. I'm sure there'll be a large crowd.

Mr. McCallum: Yes, I think you're right.

Mr. Shibley: Well, I'd like to go on then to the next document.

Sept. 5/73
11:55 - 12:00 pm.
M.S.

Mr. Deans: Do I understand you to say that you never did discuss the matter of Mr. Singer's being retained with Mr. Moog?

Mr. McCallum: That's right. I have no recollection of ever speaking about Mr. Singer to Mr. Moog. I don't ever remember anything like that.

Mr. Deans: Do I also ---

Mr. Chairman: There was a ~~statement~~ *road to be closed, was there?* I'm sorry.

You carry on, Mr. Deans.

Mr. Deans: Well, do I also understand you to say that you did not recall reading this memo before?

Mr. McCallum: That's right. I haven't read that until just very recently. When I was sitting up here every day my secretary was putting together, from all the files, this stuff that Mr. Shibley has. And, much to the disgust of Mr.

Genest, I haven't been reading it over. And it's only just very recently I refreshed my memory *I think this particular thing may be when after Dick Shibley got this ready for me. But* by reading this over. ~~But~~ certainly only in this last few days, and that's when the episode happened with my secretary.

Mr. Deans: What day of the week was the 28th? Monday?

Mr. McCallum: The 28th of 1972? Well, patience now. Let's see what I can do for you.

Mr. Deans: I assume it must have been Monday.

Mr. Genest: Monday.

Mr. Deans: Monday, is it? I'll wait until Mr. Shibley asks about the next exhibit.

Mr. McCallum: Well, you know, funny enough that's not the way I read it. You two fellows must be looking at another calendar than I am. The 28th of September, is it?

Mr. Bullbrook: August.

Mr. Shibley: No, no. August.

Mr. McCallum: Oh, I'm sorry. August. Then I do agree with you. It comes on a Monday according to my calendar.

Mr. Deans: Well, we got agreement on something.

Mr. Chairman: Mr. McCallum, there was a road to be closed. Is that correct?

Mr. McCallum: Well, there is that little road that has never been used that comes out onto University Avenue, that Mr. Moog had some idea had to be closed, yes. I'm not certain where that stands now.

Mr. Chairman: By the present plan, has it to be closed? I see Mr. Sissons shaking his head.

Mr. McCallum: No, I don't think it is. I don't think it's intended ~~to be~~ ^{to be} is it Ken? No. As you'll see in some of these things, Mr. Moog had some idea - maybe it was more his architect - had some idea that they were going to just close that road in the twinkling of an eye, and then they were going to build some of this plaza, underground plaza or whatever it is, out onto the road. But ~~he~~ they found out when they really got into it that the city had tremendous works underneath the road, and that and every other problem just made it impossible to do, so nothing ever happened.

Mr. Chairman: So, I don't need to ask you who's ~~responsible~~ responsibility it was to close the road then. Because the road isn't to be closed?

Mr. McCallum: That's right, sir.

Mr. Shibley: May I go on then with the docket for the next day, wherein it's indicated that you had a meeting with Mr. Moog from 6:30 to 9:30. I'm presuming that's p.m. Would you tell us what was the purpose of that meeting?

Mr. McCallum: August 29th. ~~Well, as you know~~

~~you have my word and I don't~~

September 5, 1973
12.00 noon - 12.05 p.m.
M.R.

(Mr. McCallum)

As you know, you have my notes and I don't have any independent recollection, other than those notes, that is at all reliable.

Mr. Shibley: No. You have them, Mr. McCallum.

Mr. McCallum: Where have I got them?

Mr. Deans: Are you asking if it's ^{in the} P.M.?

Mr. Shibley: You didn't give them back to me.

Mr. McCallum: Oh, that is right. I've got your

name marked on it. Are they in here?

Mr. Deans: ~~It says so. What are you asking?~~
~~Where are we at?~~

Mr. Shibley: I'm just asking what was the purpose of the meeting at night with Mr. Moog that lasted for three hours?

Mr. McCallum: Well, I can tell you what I remember of it. Did you find a memorandum of it, first of all; is there anything that will help my memory?

Mr. Shibley: I'm sorry, I can't assist you except this: That you also met Mr. Candy at nine o'clock that morning.

Mr. McCallum: Which? Before I went to Moog ~~xxx~~ that night?

Mr. Shibley: Yes. You had a meeting with Candy at nine a.m. on the 29th and you met with Moog for three hours on the evening of the same day.

Mr. McCallum: I haven't got a memo. I'll have to do the best I can. Some of the things that I can recall talking about were first of all, ~~and~~ and I think there is a memo about this ~~zoning~~, is there not a memo here, Mr. Shibley? Wait just a second now. Bear with me.

Well, let me go on. I thought I had a memorandum. We can't turn it up at the moment but the major point was the question of zoning. There had been - I guess first of all I remember him showing me a model of the building. It might well have been something like this one.

September 5, 1973
12.00 noon - 12.05 p.m.
M.R.

(Mr. McCallum)

And then the question came up, in the course of the explanation of the model, about the fact that he was going to put quite a bit of commercial space and he was touting his commercial space. And how it was going to ~~break~~ break the non-commercial on University Avenue, ~~and~~ I asked him what right he had to put the commercial in and it developed that he didn't have the by-law, as I recall, and was working on the theory that ~~the~~

Mr. Deans: I saw that someplace.

Mr. McCallum: I have, too, you know.

Mr. Deans: I read that.

Mr. McCallum: In any case, we'll have to try and find it.

Mr. Deans: That's on Friday, August 8th ...

Mr. McCallum: Let me see the original.

Mr. Deans: That's the content of the Friday, August 18th, matter.

Mr. Genest: Page ~~32~~

Mr. Deans: Page 33.

Mr. McCallum: Well, John says that I don't have any notes about it and I accept that. I remember that in any event we had this discussion about the zoning which had kept all of us, both Houser and me, and did subsequently, exercised with the fact that they contemplated, as part of their scheme, changing the existing Hydro by-law and I thought it was a dumb move to make. And explained it to them. In the course of that discussion, I discussed with them the arrangements that we had made to get a very large commercial area on the north side of Eglinton, directly across from where his buildings are, on the northwest corner of Eglinton.

And I discussed with them how we had been able to enlarge the commercial area there ~~and~~

H-2096 to follow

Sep. 5/73
12.05 to 12.10 pm
fvk

(Mr. McCallum)

~~We discussed with them how to handle the area~~
~~the commercial area there~~ and by provision in the ~~Hydro~~ bylaw ^{that} there was little know that allowed you to get commercial space that didn't count as part of your gross floor area. There was a great long discussion about that aspect of the matter. That came up many times, as you'll see, both before and after. I never seemed ^{be able to} to get them to understand what I thought was wrong, which was that, under the zoning for the Hydro site, it did not have a zoning for commercial, and I was concerned that they were going to bump their heads into an application to the city to change the ~~Hydro~~ bylaw and that could blow the whole thing. I know that that sort of thing took place that evening. In addition to that, I have a ~~some~~ recollection that on that evening we had a discussion about my view that, on the figures that I had been looking at, the rough figures I had been looking at, Moog was making too much money and that I wanted him to agree that the cost to him of the building would be the lever and, if there was a cost below \$44 million it ought to result in a reduction of the rent. He just went into orbit, ~~that~~ not unlike, I guess, what you've seen in here. It was that night that I learned that, we had this argument, he had some appraisal background of his own at some time in his life and we had, for openers, a pretty good argument about that particular thing and we certainly didn't agree about how it was supposed to be done.

Mr. Deans: Are you sure it was that night?

Mr. McCallum: No, I'm not sure but I think it was.

I just want you to be confident that I'm giving you my best recollection but sure, I'm not. I thought I had some - I know that these things happened more than once, Mr. Deans, and I'm conscious of the fact that they've referred to in other memos, but I have to tell you that these particular themes were often repeated. Mr. Moog and I spent a great deal of the time that we were together arguing initially about zoning and, subsequently, having great matches over what this formula should say.

Sep. 5/73
12.05 to 12.10 pm
fvk

Mr. Shibley: That's the formula referable to the reduction of cost and it was also a formula which was going to govern the amount he could borrow against the building.[?]

Mr. McCallum: That's right.

Mr. Shibley: So you viewed this to be of great significance.[?]

Mr. McCallum: Sure.

Mr. ~~Shibley~~ Shibley: The wording and intent of this formula was a matter of great substance to you.[?]

Mr. McCallum: It was indeed, ~~yes~~ sir. And the only other thing then that I remember happening that night was that in an effort to demonstrate to me, because I was extremely sceptical about the view that he held that commercial enterprise on University Avenue would be good, and therefore, good for Hydro, he took me downstairs and into another part of the building where they have this great big ~~barnlike~~ barnlike room called the ~~Generator~~ Generator and it was just packed full of kids drinking beer and noise and he said: "There's the sort of thing that brings people and this is a success." He was using it as an example of what it could do. That's about the best memory I have of what transpired that evening.

Mr. Deans: He's at least consistent. He showed us the same thing.

Mr. McCallum: Did he? I guess you get grooved when you're a salesman and you use the same pitch from time to time. In any case, that's how I remember it.

Mr. Shibley: All right. Then, I'd like to go on and deal with page 40, August 30.

Mr. McCallum: Look, can I just refer you to something so that you'll have it in your mind.[?]

Mr. Shibley: Yes.

Mr. McCallum: Do you remember we were trying, or I was trying very hard to give you every assistance I could on what happened in front of the commission on July 19? Well, Ken Candy, or Jim Durand, one of them, pointed out to me at the break that

Sep. 5/73
12.05 to 12.10 pm
fvk

(Mr. McCallum)

you'll be assisted in another way by looking at exhibit 83, which is a memorandum of Candy's reporting, at that time, on what transpired at that time and you'll be interested to note that some of the figures he used are exactly those that appear in that memorandum of mine on July 19; that figure, for instance, of \$432,000 appears right there.

Mr. Shibley: Yes, we covered that.

Mr. McCallum: If it gives you any help.

Mr. Shibley: Yes, that's why I -

~~Mr.~~ Mr. McCallum: I wasn't here, sir.

Mr. Shibley: - interjected when -

Mr. McCallum: I just wanted you to know that there

was that other source.

~~Mr. Shibley: - interjected when -~~

(Tape H-2097 follows)

(Mr. Shibley)

~~We covered that. Yes. That is why I ~~wasn't~~ ~~wasn't~~ with.~~~~Mr. McCallum? Okay. I wasn't here sir. I just
wanted ~~you~~ to know that there was that other source.~~^{Right.}
Mr. Shibley: If we could go to page 40 of the brief.

Again, was this just general review? I am interested as to why you were attempting to reach Coles. Would that have to do with matters financial?

Mr. McCallum: I ~~just~~ wasn't, as you can see. That E. H. means Elmore Houser.

Mr. Shibley: Oh, I am sorry.

Mr. McCallum: He was now coming into the ~~the~~

Mr. Shibley: Have you any information as to why Mr. Houser was attempting to reach Coles?

Mr. McCallum: No, Sir.

Mr. Shibley: You haven't taken that up with him?

Mr. McCallum: No, Sir.

Mr. Shibley: Now, then, on September 5 there is a memorandum, page 41, and it seems to be a draft of what your firm intended to be included in the agreement as to costing the building, the formula for the abatement of rent and limit on funding. Is that not right?

Mr. McCallum: No, Sir. With respect. I don't think you are right. You will notice it says, "Mr. Candy's secretary called and I dictated the following to me."

Mr. Shibley: Yes. Thank you.

Mr. McCallum: "Mr. Candy wants to know your opinion on it."

Mr. Shibley: Yes.

Mr. McCallum: This was a Candy suggestion which was ~~yes~~Mr. Genest: ~~It's~~ memo from Mr. McCallum's secretary, I believe.Mr. Shibley: Yes. I see. ~~That~~ ~~that~~ should realize that. Well, then, going to the very next document, this appears to be the draft by Mr. Houser, that is on page 42, of the formula that found its way into his September 15 draft, and

Sept. 5/73
12:10-12:15 pm
PLG

(Mr. Shibley)

I just alert everyone's attention to the last hand-written paragraph on that page 42:

"In order to assist the consulting architect in making his certification, the ~~party~~ parties hereto shall make available to the consulting architect, all accounts, records, invoices and such other material as he may reasonably require." That was in Mr. Houser's draft ~~of~~ of ~~the~~ September 15 as well; so do I take it from this that the argument with Mr. Moog in respect of the formula was being carried forward into September of 1972?

Mr. McCallum: Yes, Sir, you certainly may.

Mr. Shibley: And your firm was intent upon a wording that would permit a true costing of the building, as opposed to ~~the~~ and the production of records that ^{would} permit a costing. Is that correct?

Mr. McCallum: Yes. If I can use instead of your language ^{of} the words 'true costing', just 'Moog's cost~~ing~~'. We were driving to get Moog's cost.

Mr. Shibley: Yes. All right. Well, can we go on then to the -- there is another document that I am not putting in exhibit for a variety of reasons but I want to deal with some of its content with you, Mr. McCallum. It relates to matters set forth in a memorandum of September 6, 1972. It appears from that that you had discussion with Mr. Candy ~~on~~ September, on the night of September 6, referable to matters ^{to be} ~~discussed~~ ~~with~~ between ~~him~~ ^{him} and Mr. Houser on the 7th; and in order to be selective, in this memorandum it says that:

"They would handle the details," ~~they~~ ^{they} being Houser and Candy ~~and~~

"and if there were problems, I"

~~meaning yourself~~

"would find out what they were from Houser and I would in turn communicate them to Candy and we would use our best efforts to iron out the kinks as they arose."

Sept. 5/73
12:10-12:15 pm
PLG

(Mr. Shibley)

That is the end of the quote. So that that was an arrangement that was made while you were trying to get some time off. Is that right?

Mr. McCallum: Yes.

Mr. Shibley: And then later on, the memorandum says;

"On Tuesday the 5th, I"

| - | that is yourself | - |

"had had a lengthy meeting with Houser in his office at which we went over all the points that he had noted from his reading of the papers. Also on Tuesday, September 5, telephone conversation with Henry Sissons and the general strategy was set; i.e., if and when problems arose I would be told about them by him,"

| - | namely Sissons, I gather.

Mr. McCallum: Just a minute. Say that again?

~~Mr. Shibley: I think this is very important that..~~

Tape H 2098 follows

September 5, 1973
12.15 - 12.20 p.m.
M.R.

(Mr. Shibley)

~~Mr. McCallum: Just a minute. Say that again.~~

Mr. Shibley: I think this is very important.

~~that~~ I might say to the committee members, there's ²good reason for not putting in the whole of this memorandum, but there ~~is~~ very important content in the memorandum and I am reading ~~them~~ into the record. And part of it is, "Also on Tuesday, September 5th, telephone conversation with Henry Sissons - 10" - that means 10 ~~more~~ minutes, I gather, "and the general strategy was set, i.e., if and when problems arose, I would be told about them by him and I would work them out with Candy and with Moog. He was not to take a hard line at any time because it was in Hydro's interest, now that they have made a public declaration of the deal, to try and work out the proper deal and get the building constructed."

Now, I take it, Mr. McCallum, that on the 5th of September, you had a telephone conversation with Mr. Sissons. Is that correct?

Mr. McCallum: Yes.

Mr. Shibley: And, as a result - I'm sorry, on that day you also had a fairly lengthy meeting with Mr. Houser, your partner?

Mr. McCallum: Yes, sir.

Mr. Shibley: And you were reporting to Mr. Houser as to what the general arrangements were respecting the handling of negotiations with Canada Square. Is that correct?

Mr. McCallum: No, sir. If you are referring to the fact that as a result of a telephone conversation with Henry Sissons ...

Mr. Shibley: Yes.

Mr. McCallum: ... ~~that's~~ what I refer to as the general ~~strategy~~ strategy was set, that's not so. What that memorandum says is, I was dictating it, as you can see, and as thoughts were popping into my head I was putting them down and I was trying to keep my idea of dockets and how

September 5, 1973
12.15 - 12.20 p.m.
M.R.

(Mr. McCallum)

It reads is the following: "I had a lengthy meeting with Houser in his office at which we went over all the points that he had noted from his reading of the papers. (Time of this meeting 4.30 to 6.00)." And then another thought occurred to me. "Also on Tuesday, September 5, telephone conversation with Henry Sissons - 10 minute)." Then I go on to what I'm talking about. "And the general strategy was set, i.e., if and when problems arose ...". That is relative only to a Houser-McCallum conversation and is in no way relative to a Sissons conversation with me.

Mr. Shibley: Well, that's what I'm trying to straighten out. "And a general strategy was set, i.e., if and when problems arose I would be told about them by him".

Mr. McCallum: That's Houser.

Mr. Shibley: I see. It's Houser.

Mr. McCallum: Yes.

Mr. Shibley: "...and I would work them out with Candy and with Moog."

Mr. McCallum: Yes.

Mr. Shibley: "He was not to take ..."

Mr. McCallum: Houser.

Mr. Shibley: All right. Then, can we say, "Houser was not to take a hard line at any time because it was in Hydro's interest now that they have made a public declaration of the deal to try and work out the proper deal and get the building constructed?"

Mr. McCallum: Yes.

Mr. Shibley: Now, did that instruction emanate from Hydro?

Mr. McCallum: No. Me. This was Houser and McCallum ...

Mr. Shibley: No but I'm talking about ...

September 5, 1973
12.15 - 12.20 p.m.
M.R.

Mr. McCallum: ...who were setting up a battle plan for how they could work together to handle this transaction and what we didn't want to have happen is the two of us flying off in opposite directions. We decided therefore that if there was going to be negotiation, he would report to me. And as you will see from subsequent conversations and memos of his, he very faithfully did.

Mr. Shibley: Mr. McCallum, I'm directing my question to the phrase, "Houser was not to take a ~~hard line~~ ^{7/2/73} "He (Houser) was not to take a hard line at any time".

Mr. McCallum: That's right.

Mr. Shibley: Now, I take it that means that he was not to take a hard line at any time in the course of his negotiations ~~with Canada Square~~.

Mr. McCallum: He was to find the problems, that's right. He was to find the problems and ~~was~~ if they came to an impasse and they couldn't resolve it, he was to report to me and I'd go to work on it. Because in that way I wouldn't have him bargaining one way and me bargaining another way.

And that's exactly what we did from that day on. When they came to impasses, I came back into the act. He resolved dozens and dozens ^{up} of the other lawyers *will tell you about* other arguments.

Mr. Shibley: Mr. McCallum, as we will see, we will see the net product of the negotiations, and I put it to you that in respect of many items, including the wording for the \$34 appraisal, Canada Square got its way. Did it not?

~~Mr. McCallum: No they didn't get their way.~~

~~Mr. Shibley: Well, all right. We'll see about that.~~

~~Mr. McCallum: ... incredible ...~~

~~Mr. Shibley: Random?~~

H - 2099 - 1

(Mr. Shibley)

~~Confidential~~
Mr. McCallum: No, they didn't get their way.

Mr. Shibley: All right, we will see about that.

Pardon?

Mr. McCallum: I say ^{you} ~~we~~ had better wait until we get there because I don't think they got their way.

Mr. Shibley: I see. In any event the basic posture of yourself at least, in terms of that negotiating endeavour, was that as indicated by this memorandum?

Mr. McCallum: No, it wasn't. Sometimes I was anything but conciliatory. When I had matters in my mind that I wanted I said so. If it involved hollering, I hollered; if it involved profanity, I was profane, but I certainly wasn't conciliatory, it was entirely a matter of my judgment at that time.

Mr. Bullbrook: Before you leave that, Mr. Shibley, - or do you intend to expand on it? ^P I am interested in knowing, Mr. McCallum, whether - and we don't have the document in front of us -

Mr. Shibley: The date is September 6th.

Mr. Bullbrook: Pardon me?

Mr. Shibley: September 6th.


Mr. Bullbrook: Do we have it? No, we don't have it.

No, I just -----

Mr. Shibley: I think, I ^{will} tell you what I am going to do, I think I may just excerpt that one paragraph that we have been dealing with and exhibit it.

Mr. McCallum: Okay, sure.

Mr. Bullbrook: But I don't really need to - you tell me if my memory is improper in connection with this. I seem to gather from what was being said there that in view of the fact that Hydro had made a public announcement as to their intentions, that you didn't want in your negotiations Mr. Houser to ever



H - 2099 - 2

(Mr. Bullbrook)

reach a stage where the transaction might fall through because of the public announcement. Would that be an appropriate synthesis of it?

Mr. McCallum: No. I was going to - I was saying the following. When we are going to come to an impasse that's time to get back into the one place and then we won't have two mouths speaking. What you do is you get whipsawed. ~~When~~ You have been in as many negotiations as I have and probably more. If you have got two people speaking for the same side they'll say, "Ah, but Houser told me so and so". That way you never win. So what we did was to agree that if anybody was going to get in when there seemed to be a real impasse, I should do it.

Now on the second part of the thing, as to ~~whether or~~ ~~not~~ what we should do in the event it looked critical, I had said, and I faithfully reported it in my memo to myself, I had said to him Hydro made this deal - at least they had announced this deal - they have, if you will, selected - to use the word I used earlier this morning - this organization, and we have got to give it our best shot to see if we can carry out what Hydro want us to do, which is to make a deal with that man. That's what we have got to do. That's what I told Houser and reported what I said to him in this memo.

Mr. Bullbrook: Well my question - I appreciate that and the second part of your response is what I am interested in - I take it this is a subjective evaluation of yours. Nobody from Hydro, I take it -----

Mr. McCallum: Absolutely.

Mr. Bullbrook: Nobody from Hydro, referencing that your evidence is that you had a meeting with Mr. Gathercole where you discussed the question of a press release, I take it that nobody from Hydro ever said to you, "Now look, we want you to negotiate a hard line, but we want a contract on this thing"?

H - 2099 - 3

Mr. McCallum: No ^{sir} ~~yes~~, no one ever said that to me.

Mr. Bullbrook: That's fine.

Mr. Shibley: May we go on to page 43 of the exhibit book. I am only interested in one line in that - I am sorry, two. The first is the third line,-

"Tuesday night and Tuesday afternoon, September 12, I spoke to Ken Candy particularly about the problem of Moog's need to form a company, 90 per cent of the capital of which was owned by the Province of Ontario. I told him I was going to speak to Moog but he never seemed to be around because of the sailing".

Now then, just dealing with this business of a company, I ask you to note the date - September 12 - and we are still trying to clear up one mystery and that is a note in one of the memorandums, October 1, Treasury Board. Was it ever contemplated that an application would be made for approval for the formation of a Crown corporation that would overcome withholding tax problems for Equitable Insurance Company?

Mr. McCallum: Your question is hard to answer because you put too much on it. Let me say this. Yes it was contemplated by Bradshaw that they would like to form a company, 90 per cent of the capital of which was owned by the Province of Ontario. For what purpose he told me was to have an income tax advantage - I don't ever remember him ever using the word Equitable - for a foreign lender and he referred me to the Income Tax Act, section 212 (1)(b)(2), and argued with me that -----

Tape H - 2100 follows

Sept. 5/73
12:25 - 12:30 pm.
M.S.

(Mr. McCallum)

one B-2 and argued with me that we ought to think in terms of this deal being structured in that way. I looked at the section of the act; in fact I think ^{I have} ~~seen~~ it with me, which reads, "Every non-resident person shall pay in income tax of 25 per cent on every amount that a person resident in Canada pays for interest, except on mortgages of a corporation not less than 90 per cent of the shares of which is owned by Ontario."

Well, I would have no part of it, whatever it was suggested. As you can quickly appreciate, what he wanted to do was to have, as it were, a corporation owned by the Province of Ontario ~~which~~ which would make a mortgage, and then they wouldn't have withholding taxes on it. And what does that really boil down to? It means that he was thinking in terms of an arrangement that the Province of Ontario would enter into, whereby they would beat the federal government out of withholding taxes, and not withhold tax when it wouldn't really be owned by the Ontario government at all. Well, I don't have to tell you it didn't take me two seconds to say, "No, we're not going to have anything to do with it." Nor did we ever. That's another one of the things that was put forward, and very quickly and for the reasons I've given, summarily dismissed.

Mr. Shibley: And you have absolutely no information to the effect that there was ever any application made to Treasury Board or Management Board?

Mr. McCallum: No, sir. Nothing at all.

Mr. Shibley: Then on the next page ---

Mr. R.G. Hodgson: Before we finish with that, can I ask a question on that memo? The last paragraph with regard to the extra parking spaces required by Mr. Moog; can you roughly sum up, was that ever carried out? Was there space for the use of the commercial area included in this parking? And was it provided by Hydro at their cost?

Mr. McCallum: They had that big garage, sir, as you know, over on the back street, And they had a joint-use arrangement, as I recall, with Mount Sinai. ~~The~~ The parking for the building, as far as I was ever aware, was going to be provided over there. Now, what's going to be involved, I don't know. I had a talk, as you probably will see, sometime. I don't know if this refers to it; Oh, it does ^{with} John Walker and Witbeck. Nothing ever happened with me any further than that, and I have no further knowledge than what you see right there in front of you.

Mr. R.G. Hodgson: To your knowledge there is no additional cost to Hydro involved in parking ~~there~~ ^{space?}

Mr. McCallum: No, I have no knowledge of that whatsoever.

Mr. Shibley: To go on to page 44, September 18. At that point in time I gather this same topic was pursued and I only ask you to note: "He agreed that the Government have not told him that he can form a company 90% of the share capital of which is owned by Ontario, and he is going ahead with the deal even if he doesn't get this tax break."

Now, is there anything more in it than what's in the ~~memorandum~~ memorandum? I might alert you to this; The draft which Mr. Houser sent, of September 15, did make provision for a provincial guarantee. I don't remember offhand whether it contained anything referable to a Crown corporation being formed.

Mr. Genest: No, it doesn't.

Mr. Shibley: I don't think it did.

Mr. McCallum: I don't think any document ever made any reference to this Crown corporation.

Mr. Shibley: In any event, you having confronted Mr. Moog on the 15th with this question, he admitted to you that ~~he~~ ~~that~~ the government had not told him he could form the company. Is that right?

Mr. McCallum: Yes.

Sept. 5/73
12:25 - 12:30 pm.
M.S.

Mr. Shibley: Now, what I'd like to know is, did he indicate that he had made inquiries of the government as to whether he could?

Mr. McCallum: No, he didn't. In fact, I think it was probably the other way. My reaction to this was exactly the same as my reaction when it came to the question of the provincial guarantee. I was saying "No, and if you say, Moog, that this is valid, then you go and get me a letter in writing from the government to say so." That's how this is ~~written~~ written in that context. "If you've got something, you go and prove it to me. Because otherwise it's not part of this deal."

Mr. Shibley: Then on page 45, ~~that's just a~~

~~better example of the same~~

Tape H 2101 follows

Sep. 5/73
12.30 to 12.35 pm
fvk

(Mr. Shibley)

Okay! On page 45 that's just the letter sending Hydro a copy of Houser's draft. We can skip over to page 47 wherein Mr. Candy has suggested wording for the same problematical clause. You'll notice he says, in the third paragraph he suggests: "I've not read it to him but which I feel it would be acceptable to both the developer and ourselves." He talks about "the cost of the ~~new~~ building shall be determined by an accurate cost appraisal."

Did you have any discussion with Candy about where that wording came from?

Mr. McCallum: Where it came from?

Mr. Shibley: The fact that ~~it's~~ in quotations smacks of having been settled in some form for somebody but I'm wondering ~~it's~~ because it's not the wording that was ultimately adopted.

Mr. McCallum: Oh, no, I don't know. You may be right, sir. My instinct is that he had that put in quotes by his secretary in order to indicate ~~that~~ ^{that} was to set apart from his letter and to be the thing that he thought might be transcribed into and form a part of this formula. I certainly don't have any memory of his saying: "Here's something we've worked out and here's what it is." Not at all.

Mr. Shibley: You and ~~or~~ Mr. Houser were carrying ~~that~~ forward the negotiations at this time?

Mr. McCallum: Yes, sir.

Mr. Shibley: Did Mr. Candy tell you that on September 20 he had written to Moog saying: "You can reduce the specification in the lighting from 150 ~~to~~ to 100 foot-candlepower." ~~What~~ Were you told that?

Mr. McCallum: No, I was not told that. Perhaps that would be an incomplete answer at that time since Mr. Houser was dealing with those sort of things and trying to put the agreement in writing. I would have thought that Mr. Candy, if he was going to tell anybody, would have told Mr. Houser, not me.

Mr. Shibley: You have no information to that effect?

Mr. McCallum: No, I don't. I have a hunch again though

Sep. 5/73
12.30 to 12.35 a pm
fvk

(Mr. McCallum)

Mr. Shibley, doesn't it come up later on?

Mr. Shibley: If it does we'll find it but I can't remember.

Mr. McCallum: Okay, we'll wait for it. I just don't think that's the last word on this.

Mr. Shibley: All right. We can carry on then. On page ~~48~~ 49 - whose writing is this?

Mr. McCallum: That's mine.

Mr. Shibley: That's yours. ~~There~~ ^{This} seems to be a meeting with Ken Candy again.

Mr. McCallum: Yes, it does.

Mr. Shibley: And I notice again, at the very end of the memorandum, you're talking about various things including the loadings - on the second page, page 50 of the ~~brief~~ brief:

"We want 150 pounds point loading."

Mr. McCallum: That's what I was looking for in respect to - you were talking about lights maybe - but that's what I was ~~was~~ looking for earlier. I thought there was something. That's Ken Candy saying to me: "That's what we want", as far as I know.

Mr. Shibley: That's point loading. There's nothing here, Mr. McCallum, of him telling you about the change in the lighting which, apparently, is a major item of cost.

Mr. McCallum: Oh, well, if you say so.

Mr. Shibley: Mr. Tatham gave ~~me~~ evidence. I think that that item in itself is worth some \$900,000, the change of candlepower, ~~and~~ I'm curious to note that, on October 10, when you were reviewing such things, there doesn't seem to be any reference to it.

Mr. McCallum: No, on my memo there doesn't ~~but~~, as ~~whether~~ you say but, ~~as you say~~ ~~when~~ he spoke to Mr. Houser ~~if~~ or not, I don't know.

Mr. Shibley: So that so far as you carrying on the negotiating effort on behalf of Hydro, you didn't ~~xx~~ personally have the benefit of that piece of information to bargain with?

(Mr. McCallum: No, I didn't.

Mr. Shibley: All right. Now on the same page 50, on the bottom, you've got "under or over". I'd like you to translate that for me, please.

Mr. McCallum: I guess you would.

An hon. member: ~~Mr~~ Uppers and downers?

Mr. McCallum: Uppers and downers. I don't know, I got biffed on that last night. Boy, you ought to go into a woodshed with Genest! That's something else again.

Mr. Shibley: There wouldn't be room for two, would there?

Mr. Genest: That's privileged!

Mr. ~~Shibley~~ McCallum: You have to go back a couple of lines first. Do you see where it says "personal responsibility heavy re \$34.00 building"?

Mr. Shibley: Yes, thank you.

Mr. McCallum: It's in the light of that, if it means anything, that this other note is made ~~and~~ ^{and} I'm not too sure what the other one means. What that "personal responsibility - ~~heavy~~ heavy re \$34.00 ~~building~~ building" translates into is my saying to Candy we're having a very ~~serious~~ serious argument between Canada Square and ourselves over this formula and we're ~~ask~~ asking for costs. We've even discussed this business that you put in yours ~~of~~ of replacement cost, which, incidentally, ^{I thought} was a very good suggestion that he made, ~~and~~ ..

(Tape H-2102 follows)

Sept. 5/73
12:35-12:40 pm
PLG

(Mr. McCallum)

~~a replacement cost which I thought was~~
~~a very good suggestion that he made, and~~ we discussed that with them and they are just not coming to the party. They persist in saying that there has to be taken into account market value, and I am warning you that market value is going to bring into account a lot of circumstances that are not relevant in ~~this~~ this case, and the first thing you know the problem of getting a building worth \$34, which is what you are paying rent for, is going to be of great moment, and everybody is going to turn to you, Ken, and say, "Well, if this is what we are paying rent for, \$4.92 or whatever it is, for a quality of building worth \$34, you better be in a position to satisfy them that that is the kind of a building you are going to have produced," and that is what I am saying, that is going to be a heavy personal responsibility on you.

Now, having delivered myself of the lecture as it were, then this unders and overs; I am thinking I am talking about underruns and overshoots. How can they be calculated? I am talking about costs. Really, now that I look at it, it doesn't make much sense to me at all. I guess it isn't ~~me~~ really much help to you, but I was obviously directing my mind to costs. ~~and~~ I don't know what I said to him, what that is supposed to suggest to me, other than what it suggests right now.

Mr. Shibley: Well then it goes on and it seems to ask the same question that Mr. Allan asked some weeks back. Why should they be up to \$34?

Mr. McCallum: Why should what he is what I don't know.

Mr. Shibley: Up to \$34.

Mr. McCallum: Well, that is why I explained the earlier part. ~~is~~ That has to be taken in the context that I am busy saying to him, "Remember, we ~~are~~ are buying a \$34-a-foot quality building, and if that is what we are buying, you are going to carry the load of making sure that that is what we get."

Mr. Shibley: All right. Well, let's go on to page 51, because it expands on that. You are still worrying about this

Sept. 5/73
12:35-12:40 pm
PLG

(Mr. Shibley)

formula.

Mr. McCallum: Oh yes, I am.Mr. Shibley: And I ~~take~~ take it these are calculations you were making at that time and on the bottom it says;

"Therefore, go back to cost definition and not 'appraisal value' of \$34."

Do you see that?

Mr. McCallum: ~~Yes~~ Yes I do. Just let me say this. That piece of paper that you have taken and put in as numbers 51 and 52, while you may feel that that is the place it goes in, I am not sure that I have the same confidence that that fits in chronologically. I recognize that it makes matters easier for you and the committee if we can deal with this chronologically.Mr. Shibley: Well, it doesn't really matter.Mr. McCallum: I doubt very much that it really was, that it followed on that Candy memo, but it formed a part of my...Mr. Shibley: I explained to the committee that Mr. Bell and I spent some time trying to establish these documents that are undated in chronological ~~and~~ sequence by a reason of content. This is not a document that I feel the dating of is terribly important. It is clear from the preceding document, which is dated October 10, 1972, that you were as late as that time still concerned about the wording of this phrase.Mr. McCallum: Yes. ~~That is the reason why I~~Mr. Shibley: Then leaving the chronology out of it, because I agree, I myself couldn't establish it. You see, on the next page, page 52, you go on and you say:

"You can't (something) mortgage for more than cost as appraised."

~~and~~ I gather you are again concerning yourself for the reason that not only was this referable to the abatement of rent, but the amount he could mortgage. Is that correct?Mr. McCallum: Yes Sir.Mr. Shibley: Now is there anything else in those two pages that adds to what you have already covered?

H 210²~~1~~-3

Sept. 5/73
12:35-12:40 pm
PLG

Mr. McCallum: No. Just on that particular thing,
you will notice ● by this time I am putting east in quotes.

Mr. Shibley: Yes.

Mr. McCallum: By now I have seen some real sense
in the suggestion

Tape H 2102 follows



September 5, 1973
12.40 - 12.45 a.p.m.
M.R.

(Mr. McCallum)

~~by now I have seen some real sense in the suggestion~~ made by Ken Candy that the cost that we ought to be looking at is the replacement cost as opposed to Moog's cost.


Mr. Shibley: Right.

Mr. McCallum: And that's what that is intended to indicate. My thinking is progressive. There is, of course, a very real difference between Moog's cost and replacement cost. And that's what is intended to be there and I am saying that, in effect, you've got to go to that cost definition rather than use the word appraised value.

Now, because I'm saying that and because I don't think appraised value appeared in our discussions for some period of time, I think that's out of order, ^{but} I'm not quarrelling with what it says.

Mr. Shibley: All right. Well, then, I just want to ask you: In the early part of October, there was indication from other material that Hydro had decided to do a rationale for selecting Canada Square. This is indicated in a memo of October 2nd. Now, just so as to fit into the sequence of your own participation, was there ever any discussion with you of the need for ~~the~~ establishing a rationale for the selection of Canada Square?

Mr. McCallum: I don't think so. I'll ^{just} ~~not~~ take a look at what you are talking about.

Mr. Shibley: No, I 

Mr. McCallum: Maybe I could say if I ever remember seeing it.

Mr. Shibley: No, I don't think anything you are going to look at is going to help you. I mean around October 2nd or thereafter, were you ever approached for information or assistance or any - in any way, in respect of the compilation of a rationale for the selection of Canada Square?

Mr. McCallum: No.

September 5, 1973
12.40 - 12.45 p.m.
M.R.

Mr. Shibley: Do you have any ~~ifm~~ information in that respect at all?

Mr. McCallum: No, I don't.

Mr. Shibley: All right. So, then, if we can carry on on Page 53: These really have to do with particular paragraphs. You were still negotiating the transaction on October 13th. I'm not going to deal with them in detail.

October was a month of heavy negotiation as to particular aspects of the contract. Is that correct?

Mr. McCallum: Yes, it was.

Mr. Shibley: All right. And then, on October 16 there was a problem referenced in that letter to Mr. Nastich, referable to the time of computing the exchange rate ~~and~~ I think you've already explained that, as to when that exchange rate should be established. We needn't go into it again.

On Page 56, October 18, it starts off "Limitation on amount of mortgage. Wording of formula for ~~cost~~, i.e., replacement cost since this leads to reduction of rent."

Now, I gather you were still at this problem as late as October 18?

Mr. McCallum: Oh, yes. And that confirms what I had said to you earlier. You'll see how I'm ~~now~~ using the word "cost" in quotes to mean, as I said, "replacement cost".

Mr. Shibley: And then, ~~the~~ going down that memo, you were concerned with financial ability of Moog?

Mr. McCallum: Yes.

Mr. Shibley: "Parties Canada Square".

Mr. McCallum: Well, that's right and I wanted to know, you know, from that business we found out yesterday, who was Canada Square?

Mr. Shibley: And it was at this time you started to think of putting a restraint on him, I gather, of no sale or pledge of his shareholdings during construction?

Mr. McCallum: Correct.

September 5, 1973
12.40 - 12.45 p.m.
M.R.

Mr. Shibley: Well, then, we get down to October 18 and again this is a proposed formula by Canada Square - three-quarters of the amount by which the appraised value is established is less than \$34. That was never accepted. Is that correct?

Mr. McCallum: That's right. But, look, this is significant for another reason, too, if I can help you. First of all, ~~that~~ those words "cost represented by" is again me. That is my handwriting.

Mr. Shibley: Yes.

Mr. McCallum: ~~rejecting~~ if you will, the value of the total project.

Mr. Shibley: Right.

Mr. McCallum: But look what they were putting up to us by this time.

Mr. Shibley: Right.

Mr. McCallum: ~~Give~~ Give you an indication of what they are up to. Should the value of the total project be divided and so on: What they were saying there is, "let's have the building with all its income stream and we'll value it."

You'll see that that isn't what they got but

Mr. Shibley: Yes, but ~~there's~~ they tried that one on.

Mr. McCallum: There is another Kite.

Mr. Shibley: Yes. There is another Kite by Mr. Moog. And it didn't sell with you?

Mr. McCallum: It didn't sell.

Mr. Shibley: He was trying it on and as you say, income stream alone would have established the value at more than \$44,400,000.

Mr. McCallum: You don't pay much attention to brick and mortar, do you? *when you have that?*

Mr. Shibley: No. So you just rejected that out of hand?

Mr. McCallum: Yes, we did.

September 5, 1973
12.40 - 12.45 p.m.
M.R.

Mr. Shibley: So that was a second effort on
their part or another effort. Then, going to Page 59:
~~Yes~~ This was a variable and I take it that this was really
the form that it ultimately took?

~~Mr. McCallum: No, I don't think so, sir, is it?~~

H-2104 to follow

Sept. 5/73
12:45 - 12:50 pm.
M.S.

(~~Mr. Shibley~~)

~~...and I take it that this was really the form that it ultimately took~~

Mr. McCallum: No. I don't think so, sir. Is it?

Mr. Shibley: I believe so.

Mr. McCallum: Oh, maybe it is. I haven't read it yet.

Mr. Shibley: Did this meet with acceptance by you?

Mr. McCallum: This particular form?

Mr. Shibley: Yes.

Mr. McCallum: No. It's a form that I -- if you say it's the last form, then it's the last form. ~~that~~ I took it to the Commission and explained the difference between this form, in my judgment, and where we had started with, and got their instructions with respect to it.

Mr. Shibley: And they instructed you to accept it? Is that right?

Mr. McCallum: Yes.

Mr. Shibley: Against your advice?

Mr. McCallum: Well, against my advice, which was that this is not where you started, and this is not what was initially put to you. It can't just be left there. Initially, the Commission and the financial people in the Commission, and Mr. Candy and, therefore of course, me, started working on the idea that a deal had been made between Candy and Moog which would say that if Moog's cost was less than \$34 there would be ~~an~~ reduction in rent. And, as you can see, we tried to stick to that pretty carefully throughout. Other situations were suggested to us. We finally got down, after a great many discussions and drafts back and forth - and these are only a portion of them that you've shown them - to a position where certain things became established.

Sept. 5/73
12:45 - 12:50 pm.
M.S.

(Mr. McCallum)

Firstly, Moog would not agree to let us into his books and to use that. Secondly, we could see, and certainly I could see real merit in a process of valuation which didn't use Moog's cost; which used reproduction cost. And I hope later on I'll get a chance to explain this to you. And, at that point, I would have been perfectly satisfied to adopt the sort of thing that Ken Candy put in his suggested letter to me. And we put that to Moog and he wasn't going to go for that either. And as you can see, he countered with, "no, we want value". Indeed, he wanted value of the whole ball of wax, including the leases. Then we got around to saying, "no, you can't, that's ridiculous for the reasons we've talked about." And so you'll see that they've ~~agreed~~ agreed to put in, at our suggestion, that at the very least they had to take out those leases.

Then we got around to talking about market value with the leases out. And I countered by saying, "I think that's ridiculous. This is not a building that's going to be exposed to the market. And it just doesn't make sense to me that someone should ever be charged with the task of finding the market value of a building with no land. A building which had just been put up. A building which was slated to be rented to Hydro, but we couldn't take those Hydro leases into account. In addition to that, market value meant that you were going to be concerned at that time with calculating how much space was on the market everywhere else in Toronto. And if there was a huge shortage, the price might be way up. If there was a great over-supply, the price might be away down. And we were not prepared to accept market value in any way as a test.

That got to the place where then the suggestion was made by them, "well, then, just have value." And the value would be appraised. And ~~since~~ after we'd bargained and bargained and bargained to get this, that is what I was obliged to take to the Commission and say to them, "Here's the best I've been able to do."

(Mr. McCallum)

As I've just explained to you, here are all the things I haven't been able to do, and here has been the argument, ^{What} do you want to do about it?

"And there's two ways you can defend yourselves. One is to insist that you have ^{at} that point not Moog's cost. I was prepared to say that that wasn't a reasonable value of the building - Moog's cost. But to have reproduction cost. "Do you want to insist on that when he says he's not going to have it in any event? Do you want to take value ^{with} what I told them that value means? "Or, do you want to make certain that ^{you} spend \$34 or cause him to spend \$34 on the building, and then you won't ^{have} to worry about reductions from price, because the formula won't be of any value?" And it was at that time, and after some discussion, that the Commission decided that they could live with the formula that had been put to them, ^{and} and they would do so by making certain that it really ~~was~~

Tape H 2105 follows

Sept. 5/73
12:50-12:55 pm
PLG

(Mr. McCallum)

~~that the Commission decided that they could live with the formula that had been put to them and they would do so by making certain that it wouldn't matter, that they would get what they set out to get, which is a \$34 building.~~

Mr. Shibley: Fine. I want to show you what is ~~in~~

Mr. McCallum: That is racing ahead, but that is the sense of what happened.

Mr. Shibley: I want to show you page 62 of the agreement. 62 starts off and says:

"Canada Square has insisted that its agreement to reduce the rent and reduce its permanent financing be written separate and ~~am~~ apart from the building agreement. The formula~~x~~ proposed by Canada Square is set out in the attached agreement. May we please have your instructions in regard thereto."

Then page 63 goes on ~~to~~ We have dealt with that page in part, but towards the bottom:

"Basic lease is \$3.35. Therefore, it can only borrow what that will service, but we want it to just come ~~to~~ what he does borrow."

"Come in^{at} I suppose. And then on page 64:

"We don't know the interest. We say lease should spell out. It is \$3.35 U.S. or such lesser amount as is required to make the mortgage payments on the building. He should be limited to ~~principal~~ ^{principal} of not more than 1.3 times 34,"

and then it says:

"Agreement should have in it the window-dressing as to "cost" being less than \$34 per foot and rent being reduced."

Now Mr. McCallum, do I interpret this correctly, that when the Commission gave you those instructions to go ahead with the wording, that, so far as you were concerned, the wording now had become window-dressing?

Sept. 5/73
12:50-12:55 pm
PLG

Mr. McCallum: No. I won't say that ~~the~~ it had become window-dressing by a longway. I was -- I don't want to use a word that is inflammatory. I thought that the agreement should contain this clause because I was convinced that at one stage in the proceedings, Moog had made such an agreement with Candy and that we had proceeded on that basis.

Mr. Shibley: When you say 'this clause' you mean a clause ~~with~~ which said cost of construction?

Mr. McCallum: Referable to cost. *As I've indicated to*

Mr. Shibley: Yes. Not the clause that you got?

I thought
Mr. McCallum: ~~Referable~~ to reproduction costs. I ~~thought~~ that and I felt pretty strongly that that is what it ought to do; that there ought to be something referable to ~~reproduction~~ reproduction costs.

Mr. Shibley: Yes. Right.

Mr. McCallum: But as I explained to them at that time, I also considered that the word 'value' had as its main ingredient, in fact, almost the sole determinant under these facts of value ^{was} reproduction costs. ~~But~~ that the very thing that you were going to go through now, but that it just wasn't ~~not~~ perfectly clear and I wanted to use clearer language, and those wooden-heads wouldn't agree with me. That is, the Moog forces wouldn't agree with me, and I guess my rancour showed through and I was writing this as you know, to myself, and saying 'this isn't ~~what~~ what I want and this isn't as good as I want and I am going to be forced to face this value interpretation' which we have got to get into yet here.¹

Mr. Shibley: Yes. That is the whole point, Mr. McCallum.

Mr. McCallum: I wasn't saying that it is no good at all. If you look back one page you will have seen that place where I said, 'it will result in a reduction'. Take a look at the memo of October 18 where I say:

"Replacement costs leads to a reduction of rent."

(Mr. McCallum)

I ~~gm~~ thought then and I think now that it does.

Mr. Shibley: Mr. McCallum, you see, every member of this committee, and I must say myself, have been struggling with trying to understand what appraised value means and we have not really got very clear evidence on it as yet. It now appears from this notation that so far as you were concerned, you characterized the whole provision that you wound up with as 'window-dressing'. In effect,

Mr. McCallum: Oh, I did in a fit of rancour, yes.

Mr. Shibley: In effect, I put it to you that having regard for what could be contended for as part of any such appraisal, that even this ~~provision~~ provision is quite meaningless in terms ~~of any opportunity to~~

Tape H 2106 follows

Sep. 5/73
12.55 to 1.00 pm
fvk

(Mr. ~~Shirley~~ Shibley)

~~is quite meaningless in terms -~~

Mr. McCallum: No, no.

Mr. Shibley: - of any opportunity to Hydro to realize an abatement of rent, or any opportunity to Hydro to ascertain what were the true costs in question and whether the mortgage should be as much as \$45 million.

~~Mr.~~ Mr. McCallum: Sir, I appreciate your putting it to me and I say, with all respect to you, I don't agree with you. It isn't as clear as I wanted it. It isn't what I wanted and I'm a bad loser and that shows in the way I characterize these things.

Mr. Shibley: I'm not worried about your being a bad loser. I'm ~~am~~ worrying about what is the ordinary and usual meaning of the word "window dressing". That usually denotes something that really doesn't mean anything.

Mr. McCallum: That's exactly right. That's the way I put it and I can't take a single thing away from it, but I tell you, ^{these} the circumstances under which I said it, I hope explained to you, and to members of the committee, that it was sheer ^e pique, if you will, or rancour, that I didn't get my own way and I overstressed it.

Mr. Shibley: Mr. McCallum, nobody is placing responsibility for this on your shoulders. It's very clear ~~the~~ from the sequence leading up to the ~~the~~ acceptance of this clause that you were pressing both Mr. Moog, and Hydro, with the need for more explicit terms and the need -

Mr. McCallum: I sure was.

Mr. Shibley: - for a contract which was predicated on Moog's costs as per his original understanding with Candy. Is that right?

Mr. McCallum: It sure started that way.

Mr. Shibley: Yes.

Mr. McCallum: It stayed at it for some time.

Sep. 5/73
12.55 to 1.00 pm
fvk

Mr. Shibley: And so far as you were concerned the phraseology that you wound up with was window-dressing?

Mr. McCallum: That's what I characterized it as at that time. That's right, ^{but} ~~and~~ I'm telling you that I don't believe that ~~it~~ it is window-dressing. I didn't even believe it then.

Mr. Shibley: We're talking about how -

Mr. McCallum: Are you listening to me, Mr. Shibley?

Mr. Shibley: Yes, I'm listening.

Mr. McCallum: Because it's important that I register with you that I didn't believe it then although that's how I characterized it.

Mr. Chairman: ~~As has been~~ The committee are listening.

Mr. Shibley: We are talking now about one of the most important clauses in this agreement.

Mr. McCallum: If the building doesn't cost \$34. ~~million~~

Mr. Shibley: I ^{say it's} ~~say it's~~ one of the most important clauses in this contract, is it not?

Mr. McCallum: It's very important I think, yes.

Mr. Shibley: Yes, because it regulates the amount of money he can borrow against this building. Is that correct? It's supposed to regulate it.

Mr. McCallum: It would regulate it, sir, if the cost, or the ~~g~~ value, was less than \$44.4 million, yes. In other words all Hydro was doing was saying: "We're buying a building and we don't want you to borrow more than it's worth to us and we don't want to ~~have~~ ^{for it} have to pay more ~~than it's~~ than it's worth to us." That's is what they were doing.

Mr. Shibley: Surely, it was worrisome to you that you were ~~sitting~~ sitting there, or Hydro was sitting there, with the submission of three other developers who were contending that they could construct this building at a cost ~~and~~ materially under \$45 million.

Mr. McCallum: It wasn't worrying me then at all. My mind was directed to trying to ~~g~~ get the Moog forces to do what I wanted to do.

Mr. Shibley: Was it not also worrying you that Mr. Moog, in his mind, in the evaluation of a building, was going to be contending for royalties and 10 per cent on overhead and 10 per cent for construction profit? These were not worrying you?

Mr. McCallum: No, they're not a part of the word "value" at all. Come on, Mr. Shibley, value has to do with a dollar and worth, and value to me means something. They sure as heck don't mean whether you spend it or whether you don't spend it, whether you spend 10 per cent for profit and 10 per cent whether you have royalties, or you don't have. That's long gone. That was not then in my mind and I certainly don't think, for one minute, it forms a part of the value of the building when it's up.

Mr. Shibley: Mr. McCallum, are you satisfied with this phraseology that Hydro -

Mr. McCallum: No.

Mr. Shibley: I'm sorry.

Mr. McCallum: No, I've told you and I have never made any bones about it. If you were going to have a clause, I wanted it my way, and I didn't get it my way and it seems to me that it might help us to examine my version of what we did get.

Mr. Shibley: And I intend to.

Mr. McCallum: Okay. I'll try and be very helpful.

Mr. Shibley: That's the point.

Mr. McCallum: Let's have lunch.

Mr. Chairman: I don't know how you know what time it is without looking at the clock.

Genest: Pierre Genest tells him.
Mr. McCallum: ~~Genest tells us that~~

Mr. Chairman: All right. You've won your point.

The committee adjourned at 1 o'clock, p.m.

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Members of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Senior Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Legal Square counsel:

Douglas Laidlaw, QC

Gregory Rice

G.D. Finlayson, QC

Senior Hydro counsel:

J.F. McCallum, QC

471

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, September 5, 1973

Afternoon session

2107 -
2151

Sept. 5/73
2.21 to 2.25 pm
DT

LEGISLATURE OF ONTARIO

SELECT COMMITTEE-HYDRO HEADQUARTERS

The committee resumed at 2.21 o'clock, p.m.

Mr. Chairman: Mr. Allan has entered the room. I declare we have a quorum and we are back in session.

Mr. Shibley: Mr. McCallum, I want to take you back to page 62 of the brief of documents.

Mr. McCallum: I'm sorry, I guess I wasn't ~~in~~

Mr. Shibley: Page 62 of the brief of your exhibit which is the document we left off with and on that page, it is indicated --

Mr. McCallum: 62, wait until I get a hold of this.

Mr. Shibley: It says in part: "Canada Square has ^(a) insisted that its agreement to reduce the rent if the cost of the building project is less than \$44 million and (b) reduce its permanent financing, be [^] written separate and apart from the building agreement." Now, what was the reason for them insisting upon that?

Mr. McCallum: I don't know that they ever said why but I know that they certainly insisted, and with some vigour, that it not be put in the agreement. We had sought to have it put in the agreement, sir, and as you will see from memos of Mr. Houser and so on, we asked for it and they just said [^] no, they didn't want it.

Mr. Shibley: But without any explanation?

Mr. McCallum: No, I don't think so. I know that when Mr. Houser asked me about it, I can [^] remember replying and I think there may be a memo to that effect [^] that if we can make the agreement binding and not ~~be~~ have to have it in as part of the rest of the papers then that was OK by me, just so long as it was binding.

Mr. Shibley: All right, so you can't help us as to why?

Mr. McCallum: No, I can't, sir.

Mr. Shibley: Then on page 63, near the top of the page, I was asking you earlier about whether there was a maximum amount on the permanent mortgage and you will notice you have a note there: "received documents on the 19th, E.H. ^{and} OMB, on return - some things

(Mr. Shibley)

things discussed, not connected, no maximum on permanent mortgage." Now, was it a fact that as of October 1972, there still had not been a maximum amount pegged by Hydro or Canada Square as the amount which could be borrowed by way of permanent financing?

Mr. McCallum: I think that was the case. Yes, I think that the maximum amount came in later.

Mr. Shibley: Yes, and that amount was to be governed by what?

Mr. McCallum: The amount of the permanent financing?

Mr. Shibley: Yes.

Mr. McCallum: Well, as you remember, it was to be governed ~~by~~ finally by \$45 million Canadian and there was a clause ~~in~~

Mr. Shibley: No, no, what was to govern the computation of what turned out to be \$45 million? I am taking this as meaning there is no maximum as to the amount that can be borrowed by way of permanent financing.

Mr. McCallum: I think that's what I was saying. I was concerned with the way documents I ~~guess~~ ^{my} guess were then coming through or ~~my~~ ^{my} idea of how they were coming through and saying to ~~my~~ myself, "There doesn't seem to be any maximum on what they can borrow" and I was concerned to cut off something in the ~~my~~ nature of a windfall -

Mr. Shibley: Yes.

Mr. McCallum: That would result if there was no maximum and for that reason we got to work and put a maximum in and it ended up to ~~be~~ be \$45 million.

Mr. Shibley: All right. Well ~~that's the~~

(H-2108 to follow)

Sept. 5/73

2:25 - 2:30 pm

C.B.

~~(Mr. McCallum)~~

~~and for that reason we got to work and put a maximum in and it ended up to be \$45 million.~~

Mr. Shibley: Well, then, the next page we were dealing ^{with} when we stopped, page 64, and that's where you have the phrase "agreement should have in it the 'window dressing', as to 'costs being less than \$34 per foot and rent being reduced'".

And you had indicated you wanted to compare what was being proposed. I took it that you had said that what was proposed as part of your exhibit 59 and following, was what actually found its way into the agreement. Is that not so?

Mr. McCallum: Wait now, I'm sorry, I've lost you.

What is 59?

Mr. Shibley: At page 59 is ^{the} a letter-agreement referable to the formula and I must say that I applied your phrase "agreement should have in it the 'window dressing' as to 'costs being less than \$34 and rent being reduced', as relating to the last draft as remitted by Mr. Steadman under cover of a letter of October 19, from page 59 and following: Is that not so?

Mr. McCallum: Well, I told you that when we got to this document you are reading from now that I can't place it in the chronology of these other documents. You've made a guess and maybe your guess is accurate.

Mr. Shibley: Well, I'm looking at the top of that page 63 "received documents on 19th", and I'm taking that as the 19th of October being the same date as page 59 with Mr. Steadman's letter of October 19, ~~1972~~ 1972. So that I'm taking the memorandum on page 63 and following, which includes the phrase "the window dressing", as comments upon the documents which were received on the 19th from Mr. Steadman.

Sept. 5/73

2:25 - 2:30 pm
C.B.

Mr. McCallum: That may very well be.

Mr. Shibley: Yes.

~~Mr. McCallum~~ Now what I want to know is that why you say that what you ^{ultimately} wound up with did ~~not~~ not have the character of window dressing as per your own memorandum.

Mr. McCallum: Well, I think I told you that before lunch, didn't I? I believe ~~very~~

Mr. Shibley: Well, if you've said all you want to say about it that's fine.

Mr. McCallum: No, I said to you I wanted to discuss what I ~~think~~ think value means, or appraised value, means. If you want me to I would be glad to go ahead ^{now} and discuss the formula and what I say the meaning of that word is.

Mr. Shibley: Perhaps a better way would be to come back at that then as a separate topic. I want to get through these documents, but I thought from what you had said, that there was something more in terms of the & sequential documentation, than what you had said before lunch.

Mr. McCallum: No, I think perhaps you misunderstood me.

Mr. Shibley: I'm sorry.

Mr. McCallum: I wanted to come on and give my explanation of what the word "appraised value" means, sir, that's what I was coming to.

Mr. Shibley: Well I intend to ask you that very explicitly later on.

Mr. McCallum: All right then.

Mr. Shibley: Now, then, if we can go on. Page 65, Saturday, October 21, you are still dealing with negotiations, the

Sept. 5/73

2:25 - 2:30 pm

C.B.

(Mr. Shibley)

limit on borrowing; that's where you formed up your \$44.2,

say \$45 million in round figures. Is that correct?

Mr. McCallum: Yes, S.R.

Shibley: What is the \$48 million?

Mr. McCallum: I was putting myself to a hypothetical problem and again ~~a~~ trying to demonstrate to myself, I don't know why I found it necessary to continue doing it, but that's ~~what~~ I was doing ~~it~~. I was showing how, if you didn't put a limit on the borrowing, you could have a windfall; the very thing you and I were talking about a second ago.

Mr. Shibley: Well, then, on the bottom of that page you've got "We want Moog to get profit over a 30-year period out of \$1.49."

You make some entries on the next page, 66; "in any event he keeps, from \$1.49, a buck." Would you please translate that please?

Mr. McCallum: Again, it had about as much relation to fact as the mortgage of \$48~~2~~, which was none. What ~~was~~ I was busy saying to myself was ~~that~~, "Is there anything? Is there anything in there in that difference between what you pay for, to buy your building, or, in this case, for his financing and the total rent you pay?" I was always concerned to try and measure, call it if you will "the fat", that would be left in his hands out a that figure of \$1.49. We know today for instance that the figure \$1.49 isn't \$1.49 it's \$1.60, ~~because now that we know exactly where we stand on the financing we know that it takes \$1.60 to mortgize out the money~~.

H 2109 to follow

Sep. 5/73
2.30-2.35 pm
V.H.

(Mr. McCallum)

because ~~we know~~ ^{now that} we know now exactly where we stand on the financing, we know that it takes ~~three~~ ^{\$3.24} ~~twenty four~~ to amortize out the money, and if you take ~~three~~ ^{\$3.24} ~~twenty four~~ from ~~four~~ ^{\$4.84} ~~eighty four~~ you see that there is a residue of \$1.60.

Mr. Shibley: And actually it should be taken from ~~four~~ ^{\$4.92} ~~eighty two~~ before the set-off.

Mr. McCallum: Well, I don't know why, because I am really at the moment concerned ...

Mr. Shibley: Well, because Moog is getting the benefit of the amounts referable to that set-off, that's why. So we should relate it to ~~four~~ ^{\$4.92} ~~eighty two~~.

Mr. McCallum: Well, you can come back at me on this. What I was trying to do was explain to you that at today's figuring I would be using \$1.60 and then I would be trying to calculate what it would be for ^{the} maintenance and so on. As you know, ^{if} we were doing it today, some of the dangers, many of the dangers, that I saw in that particular part of my analysis have evaporated. Our ability to have hindsight has seen that when you take into account the acceleration ⁱⁿ costs up to about the middle of 1977 from today, \$1.45 is going -- or \$1.60 is going to leave very little if any ^{left in there.} ~~left in there.~~

Mr. Shibley: I am really interested, on page 66, in the comment: "And it is to get this million that he takes the risk of exchange on taking down". Was it your position as at October 21, 1972, as late as then, that Canada Square was taking the risk ^{as to} ~~of~~ exchange?

Mr. McCallum: No. That has reference to the battle that was going on, and ^{has} finally resolved by Milan Nastich and some of the others coming down and explaining the facts of life to me about foreign exchange.

Sep. 5/73
2.30-2.35 pm
V.H.

Mr. Shibley: Okay. All right. I would like to skip over to page 70 with you. Now this is dated, it is undated but I should tell you that it looks to me like it's Monday, October 23. It's a Monday, it's obviously subsequent in point of time to notification that the provincial guarantee was not to be given. So I have given it a date of October 23; Monday, the 23rd.

Mr. McCallum: If you will just give me a second.

Mr. Shibley: It's page 70.

Mr. McCallum: Yes, I have that one. I was looking in the originals that you gave me to see if I didn't have something scrawled on that page to give us a hand. It would save me having to guess all over again.

Mr. Shibley: Are you there with me?

Mr. McCallum: Well, we have it here somewhere you know. The difficulty is we have got so many documents; just a second, here's what I am looking for.

Mr. Shibley: It's styled "Hydro, Monday, 9.30" - got it?

Mr. McCallum: No. I am not far from it though.

Mr. Shibley: Well, it's only a matter of two pages away from where we were.

Mr. McCallum: Okay. Go on with your question and I'll see if I can find this as we get there. I just can't find my ...

Mr. Shibley: Well, will you look in the brief which is the exhibit please.

Mr. McCallum: ~~There~~ I've got it.

Mr. Shibley: Page 70.

Mr. McCallum: ~~Yes~~ Yes.

Mr. Shibley: You will see it starts off, I think that means ~~that~~ guarantee of the province, is that right?

Mr. McCallum: Yes.

Sep. 5/73
2.30-2.35 pm
V.H.

Mr. Shibley: "Not as a party now?"

Mr. McCallum: Yes.

Mr. Shibley: Is that correct?

Mr. McCallum: ~~Yes.~~

Mr. Shibley: "Listen to G. Moog's suggestions".

Now what's that about?

Mr. McCallum: Well, that's about a subject that we have talked about here ^{the} in ~~past~~ before. I will see if I can put it ^{all} ~~at~~ together for you.

On the 20th October, on page ... this is the bloodiest brief ... on page 74 of these documents that you have put together ...

Mr. Shibley: Yes, thank you.

Mr. McCallum: ... you will find that that is a part of ^a ~~the~~ memorandum ~~to~~ to McCallum from Houser which was prepared over a period of time by Houser to be discussed with me. And on page 74, in the middle of the page, you will find Houser saying ^{on} ~~the~~ October 20, the following: "This paragraph also provides that the province ... "


Mr. Shibley: Is it 74 you are talking about?

Mr. McCallum: ~~Seventy-four.~~ Seventy-four.

Mr. Shibley: Oh yes, all right, thank you. Continue please. Yes, carry on.

Mr. McCallum: Thank you. "This paragraph also provides that the Province of Ontario will sign this lease as ~~guarantor~~ ^{as} ~~guarantor~~."

H-2110 follows



Sept. 5, 1973
2:35 - 2:40 pm
JLP

(Mr. McCallum)

~~This paragraph also provides that the Province of Ontario will sign this lease as guarantor~~ (in the agreement, the provision is for the province to execute the ground lease. This is incorrect and should refer to the net lease). Should we have approval to the form of the net lease by someone acting on behalf of the province or will this guarantee come automatically? Personally, I have some reservation as to the power of the province to guarantee this lease because under the Act the province has power to guarantee many things but it does not refer to a lease."

Now, that comment was made by Mr. Houser in that memorandum dated October 20th, and it followed a previous conversation that he had with me which was prior to October 20th, in which he told me that he had looked at the Act and had come to the conclusion, from a quick look at it, that he didn't think that this was the sort of thing that we could have that Hydro could have the guarantee of the Province of Ontario.

Mr. Shibley: Right.

Mr. McCallum: And he told me that he had spoken to Jim Bradshaw about this matter prior to his speaking to me, and had said to Jim Bradshaw that he, Houser, had no instructions with respect to this and that Bradshaw had replied, "Well, then, just leave it for the time being until you do get instructions."

Now, I'm going back a bit like this because I want to help Mr. Renwick who had discussed this matter with me some days earlier, and I want to put the whole of it together now that I have a better grasp of it.

That was followed that was a document therefore that he got ready on the 20th. That was a week-end, or getting close to a week-end, and on that week-end Mr. Houser and I went over all the documents, working on the week-end that had been presented to us, and got ready a document that you'll find on page 83 of your brochure. And on page 83 of your brochure, you'll find a decision that we came to on the week-end set out on page 83, number 3, which says: "delete Province of Ontario as a party throughout the entire agreement and

Sept. 5, 1973
 2:25 - 2:40 pm
 JLP

(Mr. McCallum)

schedules".

Prior to Mr. Houser getting his longer and more detailed items for ~~discussion~~ ^{discussion} ready ~~for a~~ ^{for a} the meeting we were going to hold on the 23rd, I was making some list in my own style, my own handwriting, on page 70, for the same purpose. And all I was saying is essentially the same thing as he says on page 83; we had come to the conclusion on the week-end that we were ¹⁻ and this was the first time it had been brought to my attention ¹ and I was about to say "no way". That's exactly what I did say.

Mr. Shibley: And the reference to Moog's suggestions then are what - what is this reference then to listen to Moog's suggestions?

Mr. McCallum: Well, what I was saying to myself was when you veto it, if he has some reason, I said ^{to him} ~~at the time~~, ~~he~~ can't have this thing; that this is not a deal that has anything to do with the province. ~~and~~ ^{Again}, I said as I did with this other idea of a company, if you say that you can have this sort of thing, you bring me proof in writing that you can have it otherwise take it out of the agreement.

Mr. Shibley: I see.

Mr. Renwick: Mr. Chairman, just before we go on, on this question of the guarantee. The series of questions and the time we spent on this question of the guarantee arose ^{because} ~~because~~ of Mr. Bradshaw's meticulous reference to the ¹

Mr. McCallum: §2 22nd.

Mr. Renwick: 22nd and not to the 23rd, and the fact that he was, on the advice of his counsel, affected by the solicitor-client privilege; or at least it seemed that there was some mystery wrapped about it.

I would like to ask you, specifically, do you know of any instructions to you, as counsel for Hydro responsible for these documents, either to put the guarantee in originally or to take it out ultimately?

Mr. McCallum: No, Sir. I definitely had no instructions but the closest that anything ~~happened~~ was that on the 23rd ~~and~~ ^{whether} I can't remember ~~where~~ the letter was delivered to me ~~but~~ in any event, after we had made the decision, and, as far as I am concerned, after we had informed the other side that they were to delete this thing, came a letter from Mary West, a solicitor in Hydro, which you'll see on page 86 of this brochure that you have in front of you. See that letter?

Mr. Renwick: Yes .

MR. McCallum: And the letter says —

~~Mr. Shibley: Well you can go right back to the~~

~~?~~

~~Mr. McCallum: The last line in the second paragraph~~

(Tape H-2111 follows)

H-2111-1

(Mr. McCallum)

~~and the letter says...~~

Mr. Shibley: You can go ~~on~~ to the second paragraph. The last line in the second paragraph.

Mr. McCallum: Yes. "It seems to me the only major comment relates to participation of the Crown in right of Ontario". Now, if you will turn over to page 88, you will see at the bottom, the last paragraph, this is what she wrote: "Clause 801 of the net lease purports to include the Treasurer of Ontario ^{as} guarantor and in addition, from this point on, the Treasurer of Ontario as guarantor is joint in all clauses. I do not know what authority there is for this guarantee or for the Crown to be a party in any way to the documentation. Now, I don't know when I got it, but what I am telling you is that when I got it, my distinct memory is, and as indeed is Mr. Hauser's distinct memory, we had already dealt with it and it was, as it were, old hat to us. Moreover, it certainly didn't purport to be instructions, she was alerting us to a problem.

Mr. Renwick: Well, again, I come back that that response is all part of ^a legitimate lawyer's concern.

Mr. McCallum: Sure.

Mr. Renwick: ~~um~~ about the question. I am speaking about the substance of the question as to whether or not either anyone in government or in Hydro, as part of your instructions either told you to put it in or to take it out, and I just ~~was~~ wanted the record to be clear, I take it that so far as your knowledge is concerned, it was on your own initiative as between yourself and Mr. Hauser that that matter was deleted?

Mr. McCallum: Yes, sir.

Mr. Renwick: And that there is no significance in Mr. Bradshaw's remark, as stated in your comment just a few moments ago, "Leave it for the time being until you get instructions." You didn't either seek instructions nor were you given instructions?

Sept. 5/73
2.40-2.45 p.m.
B.A.

Mr. McCallum: No, we didn't

Mr. Renwick: So that for the purposes of our enquiry, we can consider that there was no disassociation by the government of Ontario or anyone in the government by an instruction that there was to be no guarantee under any circumstances?

Mr. McCallum: You are correct, sir.

Mr. Renwick: Thank you.

Mr. Shibley: Now, Mr. McCallum, you have already ~~in saying,~~

Mr. Chairman: May I just follow that up, ~~and say that~~

"no disassociation", I suppose at ~~no~~ time was there any indication that the government knew anything about that being in there, is that right?

Mr. McCallum: There never was any indication that I was aware of, certainly.

Mr. Shibley: Mr. McCallum, it appears from Miss West's letter of October ^b_A 23, that the documents were submitted to her, or to Hydro, with the ~~pro~~vince of Ontario guarantee included. Is that correct?

Mr. McCallum: Yes, I think that is so.

Mr. Shibley: And do you know when that documentation was remitted to Hydro?

Mr. McCallum: No, sir, I am sorry. Maybe she refers to it in the letter, but I don't know.

Mr. Shibley: All right. In any event, what I would like to ~~ask~~ ^{ask} you is this. It is now clear that as of October ~~1973~~

Mr. Genest: Mr. Shibley.

Mr. Shibley: Yes.

Mr. Genest: I think in this brief there is a letter by Mr. Hauser, under date of September 20th.

Mr. Shibley: That is an earlier draft.

Mr. Genest: Yes, but I think that document contained the clause.

Mr. Shibley: In part, but it didn't have all the documents. I am taking it from this.

Sept. 5/73
2.40-2.45 p.m.
B.A.

H-2111-3

Mr. Genest: No, but the guarantee is.

Mr. Shibley: Yes. Well, what I want to know is this.

Let's start over again. As at October 23, in any event, the fact that the province was not going to guarantee this loan was known to everyone. Is that correct? It was certainly known to Hydro.

Mr. McCallum : Yes. I'm going to say "yes" in answer to your question, the fact that the province was not going to guarantee it. Maybe you would agree with me that we could say it more aptly if we simply said that as of October 23, we had certainly said on behalf of Hydro, "NO go" and no argument after that that I can recall was heard from the other side.

Mr. Shibley: You say there was no argument about it?

Mr. McCallum: I don't remember any argument about them saying it, from that point on, no.

Mr. Shibley: Was there any difficulty arose out of it?

Mr. McCallum: Not that I am aware of, no.

Mr. Shibley: I ~~want~~ want to take you to page 89 of the brief, which contained your dockets for attendances, and you will notice that on ~~October~~ October 23 that there was a meeting with yourself, Mr. Moog, Mr. Coles, Mr. Candy and Mr. Bradshaw that lasted four and three ~~quarter~~ quarter hours, and then another meeting - I'm sorry, it was Mr. Hauser, Mr. McCallum, Mr. Moog, Mr. Coles, Mr. Candy, Mr. Bradshaw, and that was for four and three-quarter hours, and then Mr. Hauser met with Mr. Coles, Mr. Lamb Mr. Candy and yourself, for another hour and a half, and then there was a further meeting between you and Mr. Hauser. Now, ^{were} ~~your~~ your meetings on October 23 directed to the fact.

(Tape H-2112 follows)

Sept. 5/73
2:45 - 2:50 pm
CA

H-2112-1

(Mr. Shibley)

Were your meetings on October 23 directed to the fact that the guarantee of the province had been withdrawn?

Mr. McCallum : No, sir. The meetings were long, and, because we had a great many things to go over, we were attempting that day to get over and reach agreement as to the form of all of the documents that now really form the deal. And as you can see from looking merely at the ~~xxx~~ problems put to me by Mr. Houser for our discussion over the weekend, which go from 72 to 82 in our brochure, and then the items for discussion which are the next three long pages, we had a great many things to discuss. But I don't recall any longer discussion on the province's guarantee other than what I have just given you.

Mr. Shibley: I see. And then on the day following you have telephone calls with Candy, and between Houser and yourself; and then there is a note 'engaged on drafting report' - that would be your final report or the reporting letter that is already an exhibit, I should say, ~~under~~ ^{on the} transaction. Is that correct?

Mr. McCallum: I think so, sir.

Mr. Shibley: And then you have got one October 24 - meeting with Candy et al; finance men! Who did you meet on that day?

Mr. McCallum: ~~Where now is this?~~ Where now is this?

Mr. Genest: Top of the page.

Mr. McCallum: That is my secretary's writing again. That I think was the time that Milan Nastich and Peter Lamb and I don't know how many others came down and they explained to me about foreign exchange. That is the time they came down, I'm pretty sure.

Mr. Shibley: Then you carried on with meetings - I am looking now at page 92 and 93, "Meetings with Candy and Moog on October 27; 3 1/2 hours." What was that about?

Mr. McCallum: I really don't know. Let me see.

Mr. Genest: Commercial space.

Mr. McCallum: Was ~~it~~ that after the 25th, we had been up to the Hydro?

Mr. Shibley: It is October 27.

H-2112-2

Mr. McCallum: The 25th, isn't it, when I went up to the commission meeting? The 25th I was at a commission meeting?

Mr. Shibley: No.

Mr. McCallum: No?

Mr. Shibley: You were at a commission meeting on the 30th; that is the very next entry - 2½ hours.

Mr. McCallum: Well, we were certainly, ^{another}

Mr. Genest: There was ~~a meeting~~ ^{fixxxxxxxxxxxxxxx on the} ?

~~25th~~

Mr. McCallum: We were certainly bargaining. There is no doubt about that. But what particular phase of the business we were in at that moment, I can't help you Mr. Shibley because I don't know.

Mr. Shibley: I might say that there was no commission meeting on the 30th, but it is indicated otherwise, that there was a meeting on the 1st. It is also indicated in Mr. Candy's diary that on October 30 the chairman signed the agreement with Canada Square today".

Mr. McCallum: Yes. Well, I remember going to the commission. Here is my problem. I remember going to the commission with that big letter of ours dated October 25, and, I thought it was on the 25th, you see, and that is why I am having some difficulty.

Mr. Genest: There was a meeting of the commission on the 25th.

~~Mr. McCallum~~
Mr. McCallum: That is what I thought, too. But Mr. Shibley didn't seem to think there was, but I thought that there was.

Mr. Genest: That is when the letter was ~~made~~ ^{gone} over.

Mr. McCallum: And if that was the case, Mr. Shibley, what happened is spelled out in the following letter, because I went to the commission meeting, if it was on the 25th, as I think it was, with that letter.

Mr. Shibley: Yes.

Mr. McCallum: Went over, read the whole letter to them. Went over each aspect of the letter. Got instructions that I was to negotiate further with respect to certain matters which ~~are~~ ^{are} reported on the subsequent letter. And that is what that meeting with Candy and Moog would be about. That would be the hullabaloo over the

H-2112-3

(Mr. McCallum)

\$40,000 among other things.

Mr. Shibley: Was there any discussion with you, Candy and Moog on the 27th referable to the financing arrangements, the permanent financing arrangements for this building?

Mr. McCallum: No, sir, none that I can recall at all.

Mr. Shibley: Or the difficulties that now confronted Canada Square because the provincial guarantee had been withdrawn?

Mr. McCallum: Definitely that was not mentioned.

Mr. Shibley: Well, then, you did have a further meeting with someone at the commission on the 30th. It says "Then to Hydro commission meeting - 2½ hours, October 30". Was that a meeting with the commission or was that a meeting with Mr. Gathercole?

Mr. McCallum : No, I think that is the time I went back to the commission.

Mr. Shibley: Yes.

Mr. McCallum: These notes don't make it clear to me, but I think that is when I went back to the commission. I was there on the 25th.

Mr. Genest: The 1st of November was the commission meeting.

Mr. McCallum: The 1st of November.

~~And then, member, October 25th.~~

H-2112-1 follows

Sept. 5/73
2.50 to 2.55 pm
DTMr. Genest:~~Am... ..~~ October 25th.Mr. McCallum:~~Am... ..~~ October 25th and then 30th of October,

was it, or the 1st of November?

Mr. Genest: The 1st of November.Mr. McCallum: My secretary's note that it was October

30th just isn't accurate. I was only at the commission when they had their meeting, which as the commission minutes demonstrate was the 1st of November.

Mr. Shibley: Well, now, I know I am jumping ahead of it but it's on the same topic, Mr. McCallum, and I would like you to clear it up if you can.

Mr. McCallum: What's that?

Mr. Shibley: On page 101, there's a docket for November 6th and it appears that there was a telephone communication with Mr. Candy re various items in the agreement, a telephone call with Mr. Candy re dating of letters and requests for extra letter from Canada Square re option, telephone call with Mr. Millman of London Life re financing and telephone call with Mr. Coles. I am particularly concerned to know what was the purpose of the telephone communication with Mr. Millman of London Life on November 6th.

Mr. McCallum: Well, I didn't make the conversation. It's Mr. Houser's docket number one but I can't, what can I do? If you want me to I can tell you the general gist of the discussions that Mr. Houser had with Mr. Millman relative to financing of this building...

Mr. Shibley: Yes.Mr. McCallum:...as I am aware of them.Mr. Shibley: Yes.

Mr. McCallum: There was a time in the course of the ~~neg~~ negotiations when Canada Square ~~w~~ were repeating that they had not made final ~~a~~ arrangements for their financing and that they were going to have to borrow from the States.

Mr. Shibley: Yes.

Mr. McCallum: And Mr. Houser became aware of the possibility that money might be made available in Canada from Canadian

(Mr. McCallum)

sources from London Life and others for this project and at some time, I can't give you the exact date, he advised -- I guess it would be Mr. McGog and perhaps Mr. Bradshaw, I don't remember that that was the case.

Mr. Shibley: Yes.

Mr. McCallum: And they said no, they weren't interested, and from memory I think that Mr. Houser was saying to them that he thought that they could get money in Canada at eight and three-quarters per cent and they said no, they weren't interested, And then at a later date, which may be this one or that might be the first one, in which case there would be another conversation, there was a subsequent conversation when they had not told us that they had their financing and certainly we were still, as you know, right to the very end until we got here, not really aware of their financing, and Mr. Houser, I guess, was talking to them again in London Life.

Mr. Shibley: Yes.

Mr. McCallum: -- And I think got them to indicate that they might be prepared to shave about an eighth of a point off, and I think it got to the place where he indicated, I believe to Mr. Bradshaw, that money could be -- he thought money could be available for this building at eight and five-eighths and Mr. Bradshaw said he wasn't interested --

Mr. Shibley: Well --

Mr. McCallum: So that's ^{about} the whole of the story.

Mr. Shibley: Mr. McCallum, you have anticipated me. I have provided you with these documents and at 103 of the brief, committee members will want to note that there was a second conversation between Mr. Houser and Mr. Millman of London Life on that date and it says: "re mortgage". The earlier one said: "re financing", so I can start by taking it that the conversations that Mr. Houser was having with the London Life Insurance Company related to the permanent financing for Hydro's head office building?

Mr. McCallum: Yes.

Mr. Shibley: And that he had two such conversations as indicated by the docket, one on November 6th and one on November 13th?

Mr. McCallum: Yes, sir.

Mr. Shibley: Is that correct?

Sept. 5/73
2.50 to 2.55 pm
DT

Mr. McCallum: Yes, sir.

Mr. Shibley: And in effect this would be permanent financing that he would be inquiring into for Canada Square really?

Mr. McCallum: Yes, sir.

Mr. Shibley: Yes. ^{about} Now then, what I am interested in knowing is ~~that~~ the letter from Ames, which is the commitment letter of November 8th, the first part of the commitment, and I will read it. I ask you, Mr. McCallum, to note the date, November 8th. It says: "Subject to the completion of satisfactory documentation and the approval of their investment committee, Prudential have agreed to provide financing for this project on the following terms and conditions." Now, November 8th, happens to come in the interval of November 6th to November 13 -

Mr. McCallum: Yes.

Mr. Shibley: And I will also refer you, so that ~~we~~

~~can have it all in contact to the fact that from the time I'll~~

(H-2114 to follow)

Sept. 5/73
2:55 - 3 pm
C.B.

(Mr. Shibley)

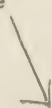
~~we~~ we can have it all in ~~the~~ context, to the fact that from the Ames' file, ^{although} as of October 4, terms more or less with the Prudential had been set in New York, they were working through October and so on,

On October 31, which is a date following notification to Ames from their file ~~of~~ of the withdrawal of the provincial guarantee, that appears to have come to their attention on October 30th, according to their file, ~~it says~~ the notes then say "no guarantee by the province."

The ~~very~~ next document in that file indicates that on October 31, Mr. Moog is indicating efforts with Equitable to form up a consortium of midwestern companies to do the financing. Now we have Mr. Houser communicating with the London Life on the two dates in question, bracketing the date of a letter from the PRUDENTIAL which Mr. Moog himself says "from that date on he was dealing with the Prudential and nobody else."

Now Mr. Moog has said that the ~~and~~ withdrawal of the provincial guarantee caused no problems, and yet on October 23rd there are meetings extending to many hours with everybody. It's not just you and Mr. Bradshaw or you and Candy and Mr. Bradshaw and Mr. Moog, but it's Mr. Houser, Mr. McCallum, Mr. Moog, Mr. Coles, Mr. Candy and Mr. Bradshaw and then later with Mr. Lamb in the act as well.

I'll put it to you, Mr. McCallum, that it is from the documents at least it appears that there was concern at that time arising ~~and~~ out of the withdrawal of the provincial guarantee, or at ~~at~~ least the advice that the provincial guarantee was not going to be forthcoming, and that as a result of that fact becoming known to Ames on the 30th, that there may well have been problems in that area. That Mr. Moog himself sought alternative



Sept. 5/73
2:55 - 3 pm
C.B.

(Mr. Shibley)

financing according to Ames's note of the 31st, and Mr. Houser's looking for alternative financing ~~again~~ according to the dockets of November 6th and November 13th.

Surely, Mr. McCallum, the whole of those attendances referable to an alternative source of financing relate to the notification that the province was not going to give a guarantee.¹

Mr. McCallum: Well first of all, none of the attendances, ~~that~~ ^{as} you call them, with Mr. Houser were anything more than telephone conversations to friends in London Life.

Secondly, they do not, as far as I can recollect, and I put it to you just as strongly as you put it to me, do not reflect nor indicate any discussion of that group, in that group that I can remember, having to do with, as it were, the refusal or the loss of the possibility of the province to guarantee it.

Mr. Shibley, I have absolutely no recollection of any such discussion, nor any moment attached to it, no sense of tension, I don't have any sense nor memory that when we said "you can't have it", that they fought. I don't think for a moment that they sought Mr. Houser's aid in finding money. It was simply fortuitous that he is involved with trust companies and lending institutions and he knew that they had said to us many times that they didn't have their financing and I think he thought he was going to do them a favour and maybe make a dollar for himself at the same time, and I just don't think for a moment that he was invited or requested to go out and find money for them.

Mr. Shibley: Mr. McCallum, I remind you that Mr. Moog himself testified, that they went down and saw the Prudential on October 4th.

Mr. McCallum: Which we didn't know.

Sept. 5/73
2:55 - 3 pm
C.B.

Mr. Shibley: All right, they set the rate, and
~~the selection of counsel for the transaction were being discussed,~~ The selection
of counsel, and that so far as Canada Square was concerned their
financing was with the Prudential.

H 2115 to follow

Sep. 5/73
3.00-3.05 pm
V.H.

(Mr. Shibley)

~~the guarantee was clearly not available, Canada Square would be confronted with two problems. One would be its credit - is that correct?~~
 Certainly, they worked on that premise throughout that period of time and the only event, the only event within the period in question, that would cause anyone to seek an alternative source of financing was the event of notification that the provincial guarantee was not to be part of the transaction.

Mr. McCallum: Well, I mean, on what you have said ^{and} to me here we go acting like a couple of lawyers, but on what you've said to me ^{there} there is no event caused them to go seeking alternative financing. If I understand you correctly, they thought they had it buttoned down with Prudential and I guess that's why they were so cold to Houser, which we couldn't understand. Frankly, when we got such a cool reception, when ~~we thought~~ Mr. Houser thought he was going to perform a very real service for them by indicating how they could get Canadian money and they would have none of these problems, it wasn't at all warm. Nobody ~~we~~ clapped them on the back and said, "let's talk about it," at all. And that's not really the response you expect from people who haven't got an idea that they can get it elsewhere. And when he came back to them the second time saying ^{you} you know, I think I can even get it at a better rate, they just got a flat "no". I don't think ~~really~~ ^{we knew that} that they were looking elsewhere.

Mr. Shibley: Well, Mr. McCallum, once the provincial guarantee was clearly not available, Canada Square would be confronted with two problems. One would be its credit - is that correct?

Mr. McCallum: Well, you see ~~my~~

Mr. Shibley: In the sense that with the guarantee, the credit was ~~was~~ absolute, but without the guarantee then ^{they} ~~would have~~ ~~to~~ look further at it.

Mr. McCallum: Well, Mr. Shibley, I don't know but I would have thought that most lending institutions, I have

(Mr. McCallum)

always thought - and as a matter of fact I am not sure if Jim Bradshaw disagreed with me earlier on it - I have always thought that Ontario Hydro's covenant was so good that you couldn't really distinguish between them -

Mr. Shibley: Mr. McCallum, that kind of an answer is of interest but it's spread all through the Ames file *that the matter of the guarantee was*
Mr. McCallum: But, Mr. Shibley, listen. I am not a party to that infamous file. I am here to help you any way I can....

Mr. Shibley: I realize that.

Mr. McCallum: ~~hey~~ but please remember that you mustn't tax me, in fairness. Ask me to help you if you will and I'll try. But don't tax me with what's in the Ames file.

Mr. Shibley: All right.

Mr. Genest: Mr. Chairman, I am sorry. Have we not had enough of this? Mr. McCallum has denied five ways and sideways and frontways and backwards, now are ^{we} just not getting into a sort of an argument now? I suggest this line of questioning has gone far enough.

Mr. Chairman: Would you care to comment on that Mr. Shibley?

Mr. Shibley: Well, I wasn't through, Mr. Chairman.

Mr. Chairman: Well, I don't want to cut Mr. Shibley off if he has some knowledge of the problem but I am inclined to agree that Mr. McCallum has denied it just about strenuously that he knows anything about this as anyone can do.

Mr. Shibley: Well, Mr. Chairman, let me start back this way. I am having enough difficulty, Mr. Newman. The purpose of having a provincial guarantee would be to add to the credit of the transaction with any lending institution. Is that correct?

Mr. McCallum: I don't know. Now, I am going to make my position clear. That business of having a provincial guarantee was not there at my suggestion nor was it there at any time with my knowledge except I objected to it. Someone who put it there, and Mr. Bradshaw I guess is the man you are going to have to ask, had a reason for getting it. I am perfectly prepared, but I got burned yesterday for doing this, for going along and talking to you in the way we are but you see when I am doing it I am only just giving you my thoughts on the matter, Nothing that is of any probative value. I wasn't very popular with the people behind me yesterday when I ~~and the other people~~

Mr. Shibley: My difficulty, Mr. McCallum, my difficulty in turn is, it's chicken and egg. I have got to deal with you while you are in that witness box to the extent I am able with other material that is in evidence.

Mr. McCallum: Sure. You know I'll help you any way I can.

Mr. Shibley: I know that.

Mr. McCallum: It is just that I am once bitten a little bit shyer today.

Mr. Shibley: I am sorry you were bitten but it wasn't by me.

Mr. McCallum: Oh no. *But the same sort of* You are right. *I see the* ~~just~~ *are* questions coming and I recognize it and I am ~~just~~ a little bit shy. Go ahead though. I will try and help you.

Mr. Shibley: Now, what's on my mind is this. That there was represented to Ames and through it to the lending institution until the 30th or somewhere between the 23rd and the 30th of October, 1972, that ~~the~~ *a* provincial guarantee was going to be provided. ~~It is also that~~

(Mr. Shibley)

~~It's clear that once they were alert to the fact there was no guarantee, their concern~~
themselves with what
- one is the ability of anyone to sue Hydro without consent, and the other was, well I would have thought that it was apparent from the fact ~~was~~ that Moog was now looking for alternative financing, that there was some question evolved from that circumstance that maybe the Prudential would not go through with it.

Now, then, with those two problems - the one of credit, in my mind, and the one of the right to sue, the next thing I find in the material is the communications as indicated by the dockets, which seems to relate to financing of the building, and the other thing that has happened in November, according to the Ames file, on the 16th, they seemed to quiet their concern about the right to sue because Ontario Hydro - I'm sorry the Ontario Government had accepted the proposal that ONTARIO Hydro become a Crown corporation. That seems to solve the problem of the right to sue and in some manner they seem to have quieted - if ~~was~~ there ever was a problem - they seem to have got past any problem of credit. And the only documented evidence we have before us is the communications that are indicated in your dockets.

Putting all of that together, I would like your information, to the extent that you have ~~as~~, as to whether there was any effort made, beyond simply making inquiry of London Life for financing, to perpetuate or continue forward the financing for Canada Square.

Mr. McCallum: Does that mean ~~we~~ ^{we} were asked in some way to try and assist them to ~~get~~ their financing?

Mr. Shibley: Or to support their position with the Prudential or however?

Mr. McCallum: No Sir, to answer them one at a time, we were never asked to assist them with their ~~fin~~ financing;

Sept. 5, 1973
3:05 - 3:10 pm
JLP

(Mr. McCallum)

secondly, we were not asked to assist them with Prudential, and I'm absolutely confident that they never mentioned that company's name to us ever, at any time. Somewhere in the course of the proceedings, they did mention to us Equitable, but they were just hyper on the question of keeping from us the source of their money at any time, that it seems to have almost spilled over into their evidence here but they really wouldn't tell us who they were dealing with. And we didn't know anything about Prudential, Sir, at any time.

Mr. Renwick: Mr. Chairman, ^{could} I go at this ^{from a} little bit different point of view? I am going to ask one question about the guarantee, but that has nothing to do with the other questions I'm going to ask just to clear it up. I notice - perhaps Mr. McCallum would help me ^{- on his original} ~~copy~~, or his file copy of the Ontario Hydro - Canada Square items for discussion, marked in my book, page 83, which is ^{as} I understand it, the three pages of questions which were discussed at the lengthy meeting ^{or meetings} on October 23rd.

Mr. McCallum: Yes, these were ^{really} ~~Mr.~~ Houser's, Sir, with that one correction. Mine were hand-written - I showed you on another page, in any event.

Mr. Renwick: But MR. Houser was with you at the meetings when these discussions took place?

Mr. McCallum: Oh yes.

Mr. Renwick: I notice in the margin of most of them there's a reference as to the usual kind of notation that one would make as to the result of the discussion. I don't see ^{or} my copy is not clear ^{what} as to the reference is opposite three: "Delete Province of Ontario as a party throughout the entire agreement and schedules". I don't know whether that's an Okay or what it is.

Mr. McCallum: Neither do I. I guess my copy is no better than yours. I guess Mr. Shibley has the original; maybe he will be able to help us.

(Mr. McCallum)

Mine are just copies, Sir. He's got all the originals.

Mr. Renwick: Mine is not sufficiently clear. Page 83 opposite item 3: "Delete the province" is the marginal notation in pencil or ~~ink~~ *ink* "okay" P

Mr. Shibley: I'll reply to that in a moment.

Mr. Renwick: While they are looking that up, to come to the telephone conversations between Mr. Houser and ~~Mr. McCallum~~, I notice in the ~~document that each of them refers to the telephone conversations with Mr.~~

(Tape H-2117 follows)

September 5/73
3.10 to 3.15 pm
DT

(Mr. Renwick)

Mr. Millman, I notice in the docket that each of them refers to telephone conversation with Mr. Millman but doesn't indicate where the call originated. I take it that the one on November 6th originated with Mr. Houser calling Mr. Millman.

Mr. McCallum: Yes, from memory, the way I have it in my mind is that at a board meeting of another company which Mr. Houser is a director of, which is in the financial business, he had run into I guess Mr. Millman or someone like that, and had broached the problem of could they find some financing, and I think Mr. Millman then was calling to say, "Sure, we think maybe we could do something for you" and so on. I think, I can't tell you for certain, but I think it was -- if it wasn't Millman calling Houser, it was Houser calling Millman at someone else's suggestion, the person that he spoke to at that other board meeting, sir.

Mr. Renwick: So I take it that in substance, without going into a long series of questions and answers --

Mr. McCallum: What does it say?

Mr. Renwick: If I may interrupt myself on this, the marginal note appears to indicate "OK" opposite that item. I just wanted the record to show that particular --

Mr. McCallum: Well, it is helpful to my -- thank you very much, it is helpful to my memory because I thought it was just accepted right then, too, sir.

Mr. Renwick: Whatever the substance of those conversations ~~was~~ the net effect of them was that London Life indicated some interest in the matter, that there was subsequent consideration of a little bit of negotiation as to whether they would shave the rate.

Mr. McCallum: Yes, sir.

Mr. Renwick: That's --

Mr. McCallum: ~~I don't know if it was a~~ ~~was the negotiation~~ I think they became a little more anxious, if you will remember. At that time, money was as cheap as it had been and there was quite a bit of money around.

Mr. Renwick: Do you know who Mr. Millman is or what --

Mr. McCallum: Yes, he is one of the senior men in

Sept. 5/73
3.10 to 3.15 pm
DT

Mr. McCallum)

London Life. He is below the Jefferys and so on but he is a senior man in London Life.

Mr. Renwick: Do you know whether the matter ever got so far as an executive committee of the directors of London or whether it got to the board of directors of London?

Mr. McCallum: No, sir, I certainly ~~don't~~ don't know but I have a very strong suspicion that it didn't, but I don't know, sir.

Mr. Renwick: That it didn't?

Mr. McCallum: I don't think it did, no. See, we were never able to say on behalf of Canada Square, ^{is} they have got some interest? Having once awakened the interest, Houser never ~~was~~ got any real encouragement from Canada Square.

Mr. Renwick: Let me throw ~~in~~ in what concerns me and it may just be my naturally suspicious nature. During Mr. Smith's evidence, he gave evidence with respect to attendance by himself and Mr. Cronyn in an off-hand way at a meeting of the board of directors of London Life.

Mr. McCallum: Yes.

Mr. Renwick: Now I wonder whether Mr. Shibley could help me as to when that took place. My recollection is that that ~~was~~ was a reference in November or I would not be raising it. ~~Mr. Shibley:~~ ^{Mr. Shibley:} ~~I can't help you on that. I'll check but I think it's~~ Smith and Mr. Cronyn ~~was~~ were at a ~~meeting~~ meeting of the board of ^{Certainly} ~~June, 1973~~ directors of London Life and my recollection is that it is around that time and I am now going to defer, Mr. Chairman, if I may, and come back to it. I am not going to pursue the matter until I have got the actual reference. My recollection was that that meeting of London Life took place in this same period of time but I will now check it and, with your permission, come back to it. I don't want to delay --

Mr. Chairman: All right. Mr. Shibley, go ahead.

Mr. Shibley: Just coming back then to the documentation, Mr. McCallum, on page 73 of the brief, again there is reference here, about two-thirds of the way down, to the fact ~~that~~ that ^{there} is no limitation on the amount that can be borrowed, and I feel that in the

Sept. 5/ 73
3.15-3.20p.m.
B.A.

(Mr. Shibley)

~~To the fact that there is a limitation on the amount that can be borrowed, and I feel that in the first instance, the amount that can be borrowed should be a minimum of the American~~
~~equivalent~~ equivalent of \$40 million Canadian, and if ^a ~~the~~ limitation ^{is being} ~~has been~~ placed on the borrowing, it again should be the American equivalent of a limitation expressed in Canadian dollars."

Now, in the material produced by Ames, that wording in the draft was changed, so as rather ^{than} reading "the American equivalent of Canadian dollars," it simply reads, "\$45 million U.S.," and I am wondering whether you can help me and the committee as to the significance of that differential.

Mr. McCallum: Well, I sure don't know why it was done but I know that we ended up with ~~a~~ a limitation of \$45 million Canadian just in the way ^{that} it has been described here, and if someone made an application to Ames for something else, they aren't going to get it as far as we are concerned. It is \$45 million Canadian and that is what the agreement says.

Mr. Shibley: All right. Then you have dealt with what is on page 74. I must say to you, Mr. McCallum, that I took the October 20th memo of Mr. Houser as a memo from him to you pointing up ~~the~~ different things, and on page 3 he was alerting you, among other things, to the fact, around half-way down, "This paragraph also provides that the province of Ontario will sign to this lease as guarantor, " and then there is a question mark. Is that your question mark?

Mr. McCallum: Over on the left hand? Sure is.

Mr. Shibley: So that, isn't this a situation whereas of October 20th, Mr. Houser is memoing you as to the content of the document, you are now alerted ~~as~~ to the presence of the guarantee and you mark it as a question, whether it should be included. And then you communicate with Miss West, or it appears that the sequence is that the next thing is a communication from Miss West on October 23 saying there is no way there is going to be a provincial

Sept. 5/73
3.15-3.20p.m.
B.A.

(Mr. Shibley)

guarantee or there is no arrangement for such.

Mr. Genest: No authority for it.

MR. McCallum: Yes, no authority for it. I don't think that

is the way I had expressed myself, Mr. Shibley ~~-----~~ I thought that I had said to you that prior to the 20th we, Mr. Houser and I, had this discussion about whether they could do it and expressed grave doubts that we could. He then got back into the issue in the memorandum of the 20th. We decided that weekend, when we worked on that weekend, that there was just no way that was going to happen, and I would use my stock thing, "If you say that ^{as I} you have to get the letter," and as far as I know that was communicated to them on the 23rd. ~~and~~ It seems to me that it was after we had had the meeting, or during the course of the day ~~before~~ before Miss West's letter came to us, and I ~~have~~ told you that Mr. Houser and I agree on that, because we talked ^{about} it last night, and it was after that that we got Miss West's letter. ~~and~~ I think that was the proper sequence.

Mr. Shibley: Now, then, I have nothing further on that document. The items for discussion, you say, ~~was~~ ^{are} the ~~product~~ product of your own effort, that is at 83 and following. Is that right?

Mr. McCallum : No, the 83 was the Houser document.

Mr. Shibley: No, that is what confused me, Mr. McCallum.

I thought the October 20th, 72 and following, was Mr Houser's memorandum to you.

Mr. McCallum: Yes, sir.

Mr. Shibley: And why it is sequentially as I have got it in the brief is that it looked to me, and correct me, please, if I am wrong, that he memoed you ^{to his} as ~~to~~ ^{to his} review of the documents on the 20th, and then you thereafter said, on the document, "Items for discussion 83 and following," (3) delete Province of Ontario as a party throughout? That is why I thought this was your document. It is also his, is it?

Mr. McCallum: No, it is not also his; it is his, ~~it~~ ^{is} is not mine. The one that I said was mine is the one that is prior

Sept. 5/73
3.15-3.20p.m.
B.A.

(Mr. McCallum)

to this. You will see as I explained to you. There is a hand-written document at page 70, and that is mine, Mr. Shibley.

Mr. Shibley: Oh, all right. Both the typed documents are Mr. Houser's?

Mr. McCallum: Yes, sir.

Mr. Shibley: Then, coming back to the hand-written one which is where we started, on page 70, again that looks like a memorandum on a Monday, 9.30. You don't know what Monday that is?

~~Mr. Houser: I don't know what Monday that is.~~

(Tape H-2119 follows)

Sept. 5/73
3:20-3:25 pm
C.B.

~~On a Monday, 0-20-73, at 11:00 AM, Mr. McCallum and Mr. Shibley were present.~~

Mr. McCallum: I think probably it was the 23rd, sir.

Mr. Shibley: Yes, you've noted it "not as a party now".

The next item is "permanent financing limit of \$45 million, i.e. 35 times 1.3 plus \$600,000, \$45 million." So it was rounded off with the \$600,000.

Mr. McCallum: Yes sir.

Mr. Shibley: That's the only explanation for that added amount.

Mr. McCallum: Well now, it was rounded off but you just don't round up \$600,000 without a view on it.

Mr. Shibley: Well, what's your view?

Mr. McCallum: The reason was that there were two things that we were quite conscious of the fact that we thought would have to be paid. So we were in a position of saying to ourselves on the weekend, "These people, if they are going to get ^{per} permanent financing and they are not going to take it down until 1975 ^{at} or the end of that time, are going to have to pay a very hefty fee to have ~~it~~ that set aside for them so that they can take it down in 1975." That was our practice, and our experience.

We contemplated that that fee would be in the nature of one per cent ~~of~~ or \$450,000 that they would have to ante^e up. How this many Moog has subsequently succeeded in getting a promise to hold that kind of money for him for 1975 without ante^{up}ing, that kind of money is something I don't ~~know~~ ^{know} it's not in my experience that they do that sort of thing regularly.

So we figured that \$450,000 was going to have to be used for that, and we figured out the lawyers would take a good bite, and it seemed to us not unfair that \$600,000 would be, as you say a round figure, that we'd better allow him, that he was never going to get his hands on.

Mr. Gaune ^{t:} Just a small retainer.

Mr. McCallum: A nice tidy fee.

Mr. Shibley: Mr. McCallum, we can jump ahead, ^P page 89 and following contain a number of dockets. Is it your evidence in summary that those attendances were wholly to settle content of the documentation?

Mr. McCallum: Wait now, I don't want to just jump at this. ~~Mr~~ This is 89 sir, you are looking at?

Mr. Shibley: 89, yes.

Mr. McCallum: Well then, let's look at the two that have been written by my secretary, they are in handwriting. The others I won't speak about for the moment. The top one I've explained to you. I believe that was the time when Milan Nastich people came down and spoke to me about foreign exchange. The one in the middle, the third one down, that seems to represent a meeting of October 23rd, that's the meeting we've been talking about. And the other two are Mr. Houser's dockets, and they to some extent obviously reflect the same meetings on the 23rd.

Mr. Shibley: You were also meeting on the 24th with Mr. Candy ^{et al.} ~~and his~~ finance men. Again...

Mr. McCallum: Just a minute now, sir.

Mr. Shibley: On the bottom of 89.

Mr. McCallum: Just a minute now, "met with Candy and the finance people", that's ^{is} right.

Mr. Shibley: What was that all about?

Mr. McCallum: That's at the top of page 89, isn't that what you are talking about?

Mr. Shibley: Yes, thank you.

Mr. Genest: No, no, no.

Mr. McCallum: This is another time I've been telling you about. ~~If~~ it is the one at the top of the page I believe that was the time Mr. Nastich came down. Now is there another one you want to ask about?

Sept. 5/73
3:20-3:25 pm
C.B.

document ~~4~~ — ^{ll}
Mr. Shibley: Oh, I see the October 24. I'm sorry, my

Mr. McCallum: That's okay.

Mr. Shibley: I'm talking about the October 24 meeting.

Mr. Gemest: That's the one he is talking about.

Mr. McCallum: That's the one we are talking about sir,

Isn't it?

Mr. Shibley: What were you talking about then? Oh,
that had to do with the exchange.

Mr. McCallum: That's right sir, yes.

Mr. Shibley: Fine. Then jumping down to 92, meeting
with Candy and Moog on the 27th, ^{What} was that discussion about,
three hours?

Mr. McCallum: 27th. ^{Well,} that's the one I was telling
you about. I think that's the one where we had been to the Commission
on the ~~25th~~, They said to us, "You've ^{got to} do better than this. In
particular you have to get a participation in respect to what
we've called the bank floor", and that was, as I recall, almost
entirely dealing with that getting of that \$40,000 which you
see in the documents now. There may have been at the same time
some of the other matters that we were told to go out and deal
with, everyone of which would be reported on in the subsequent
letter to the Commission, which went to them on November 1st.

Mr. Shibley: Mr. McCallum, are there any dockets of
yours subsequent to ^tOctober 30, 1972?

Mr. McCallum: Are there any dockets of mine? Well, there
is the one on the next page, page 93, is that the one you are
talking about?

Mr. Shibley: Yes.

~~Mr. McCallum: I've told you that I think that's inaccurate
that that should be marked for the time I went to the Commissioners~~

H-2120-1

~~Mr. Callum: The one on the next page, page 93, is that the one you are talking about?~~

~~Mr. Callum: Yes.~~

Mr. McCallum: I've told you that I think that is inaccurate, that that should be marked for the time I went to the commission^{ers} on the 1st.

Mr. Shibley: Yes, all right. After that did you

Mr. McCallum: Well, not that I am aware of.

Mr. Shibley: I might tell you I ~~found~~^{none} ~~none~~ in your file.

Mr. McCallum: You didn't? Well, I haven't gone through them but as far as I am concerned that is all there is. But do you want me to check for some more?

Mr. Shibley: Well, I want to know, did you have any further attendances respecting the Hydro building following November 1?

Mr. McCallum: I may have had, but I don't remember any. The ones I would have, the bargaining was over, and the ones that I would have would be only, would probably go to Mr. Houser, and I would have attendances, ~~and~~ and therefore dockets of time spent with Mr. Houser. With the other people on the other side, I don't remember any of those, sir, unless, I just don't think I can recall.

Mr. Shibley: Well, it appears that when you and Mr. Houser got together the dockets reflect that. ~~and~~ I am just interested to know whether you had any more involvement after November 1?

Mr. McCallum: I ~~may~~ may have, but I don't remember any.

Mr. Shibley: It is not reflected in the dockets, you ~~see~~^{see} ~~very~~ ~~day~~ ~~day~~

Mr. McCallum: No.

Mr. Shibley: Is there any reason why you would have nothing further to do with this transaction pending its completion?

Mr. McCallum: Yes, because all that needed to be done from that time on was sign the papers and you are in business.

Mr. Shibley: All right. I want to take you to page 94. When were these notes made? If I may help you, Mr. McCallum?

Mr. McCallum: I wish you would because I'm

Mr. Shibley: We believe, only by reason of our own

H-2120-2

(Mr. Shibley)

investigative efforts, that these were notes that you may have prepared for purposes of the commission meeting on November 18,

Mr. McCallum: No, you wouldn't be right, sir.

Mr. Shibley: Or October 26, one of the two.

Mr. McCallum: No, sir, you wouldn't be right.

Mr. Shibley: I see.

Mr. McCallum: You just are not right. This was made prior to either of those meetings and would have been made ~~1-~~ blessed if I'm just exactly sure, ~~but~~ but nothing ~~1-~~ that is not the gist of the sort of thing that we discussed at either of those meetings and is therefore not from those meetings, of those meetings, or for those meetings.

Mr. Shibley: Well, I'd like to go through its content with you in any event because it seems to be a fairly comprehensive review. It starts ~~off~~ ~~up~~

"Nature of the transaction". Would you go through it for us, please, it is in your handwriting?

Mr. McCallum: Yes. What was your suggestion? Did you want me to read it to you, sir?

Mr. Shibley: I'd like you to read it and comment on it, or in an explanatory way as you go through it.

Mr. McCallum: Well, "Nature of the transaction", I don't know. I suspect that ~~1-~~ I can't think of a reason in the world that I would make a note "nature of the transaction" unless I was trying to lay out a skeleton for enlarging on in a letter or doing something of that kind. That would just be a reminder that I was going to ~~1-~~

Mr. Shibley: So you want to peg this ~~as~~ at least in October 1972, you have already effected a set-off to come up with a net amount of \$4.84 on the rental?

Mr. McCallum: Well, I don't remember when that was done, but that is true, it was done.

Mr. Allan: Mr. Chairman, the mention of that \$4.84 net rental; isn't that misleading?

Mr. Shibley: It is, because the ~~1-~~

H-2120-3

Mr. Allan: There is no \$4.84 net rental, because the difference between \$4.84 and \$4.92 is an amount that Hydro are paying in taxes on



H-2121-1 follows

Sep 5/73
3.30-3.35 pm
V.H.

(Mr. Allan)

~~Four and four ninety-two is an amount that Hydro are paying~~
~~in taxes on~~ behalf of Canada Square for the property they -
isn't that right?

Mr. McCallum: No, that they're, Canada Square, are
paying to us on behalf of the totality of the taxes.

Mr. Shibley: It amounts to ~~two~~

Mr. Allan: Well, they are paying really for their
space; the taxes for their space.

Mr. McCallum: They're paying - yes, that's ~~rig~~
what it would amount to. They're paying taxes on their
space which is the commercial space.

Mr. Allan: And which they're deducting from the
four ninety-two.

Mr. McCallum: Well, no. Mr. Allan, if you look
at it this way, they're paying \$6.00 for that space from
day one ~~and~~ I had always had it in my mind that in paying
us the \$6.00 for that space, there was a ~~was~~ ^{was} from four
ninety-two to \$6.00 which meant that the difference was
\$1.08 ~~and~~ I took it that that \$1.08 was enough to enable us
to pay the taxes on that site so that, in effect, they were
paying us the tax money.

Mr. Allan: They are paying the tax money.

Mr. McCallum: That's right, so that I've always
looked at it as if that meant that they were paying the
taxes on that space. You see? They were paying us the four
ninety-two and then they were paying us the \$1.08 more, which
meant that if the \$1.08 ~~was~~

Mr. Allan: Well, this would be quite correct
except that they're paying you~~x~~ by the deduction their
taxes.

Sep 5/73
3.30-3.35 pm
V.H.

Mr. McCallum: Yes, well, however you get at it, they're paying; forget the taxes for a moment while you and I get right on the arithmetic. They are paying us that \$1.08 immediately by ~~starting~~ saying to us ~~that~~ you only need to pay us \$4.84¹¹ which is delightful from Hydro's point of view because ~~when~~ win, loose or draw, whether they rent that space or not, we are getting \$6.00 for it.

Mr. Allan: Well, you are getting \$6.00 but we are paying the taxes.

Mr. McCallum: Who is? Hydro?

Mr. Allan: The Hydro.

Mr. McCallum: Sure. That's right. Always.

~~XXXXXXXX~~

Mr. Shibley: I think, Mr. Allan, ~~too~~

Mr. McCallum: Hydro from the word go said "We'll pay taxes on the whole thing" ~~too~~

Mr. Allan: Yes!

Mr. McCallum: ~~too~~ which represented a bonus to ~~too~~

Mr. Allan: So in reality you're only getting the four ninety-two plus the taxes which is \$6.00.

Mr. McCallum: ^{Exactly.} And the taxes is more than we were going to get if we had stayed with the original Moog proposal.

Mr. Allan: Yes, but really, we are paying the four ninety-two.

Mr. Shibley: That's right.

- Mr. McCallum: No question about it, sure.

Mr. Shibley: All right, would you carry on then with an explanation of page 94 and following, Mr. McCallum.

Mr. McCallum: Yes, well, I don't know why I put that paragraph at the top. I haven't any idea except I must have been going to write a letter on it or do something where I was going to sum it up in a way that that would just remind me of ~~any~~ something. Again I have a ~~main~~ reminder down. "Net effect. Square" ^{1-1/2 kat} means Canada Square ¹⁵ construct the building

Sep 5/73
3.30-3.35 pm
V.H.

(Mr. McCallum)

1.3 plus gross floor area or 1.2 of office space of which eighty-three-five is commercial. Hydro pays rent of four eighty-four per a foot for office space for 30 years plus realty taxes plus cost of exchange on repayment of money borrowed in U.S., maximum \$45 million Canadian or ^{its} U.S. equivalent, against set-off of gain if exchange rate is favourable; plus use of Hydro lands, say \$6 million for 30 years at \$1.00; use includes use of lands as security for money they borrow" ~~and~~

Mr. Shibley: Stop there, Mr. McCallum. Just from that content alone, isn't it clear that this is post-October 20th memoranda of Mr. Houser's because by now there is a fixed sum, maximum \$45 million; ^{the} question of exchange seems to be settled, etc?

Mr. McCallum: I had the idea, I am not trying to quarrel with you, but I just had the idea that those particular items, sir, had been ~~was~~ settled prior to October ^{20th} ~~20th~~

Mr. Shibley: I have another way of pinpointing the time with you but I suspect that it is very late in point of time, but, carry on.

Mr. McCallum: Okay, sir. Then I have written: "Money is made; one, during construction by kickbacks from suppliers; two, manipulate cost between this and other projects, that is, high here and low there, all this is possible because he can borrow \$45 million against a formula which does not keep him to cost ~~and~~"

Mr. Shibley: Now, stopping there, that formula again, this is the one in your crow, so to speak, with Canada Square, that you didn't get a formula that was acceptable to you.

Mr. McCallum: Didn't get the one I wanted, no.

Mr. Shibley: And you say ~~and~~

Mr. McCallum: You noticed what I said? I didn't really agree with you; when you said I didn't get one that

Sep 5/73
3.30-3.35 pm
V.H.

(Mr. McCallum)

was acceptable to ~~see~~^{me} under the circumstances, I think that they have a working formula as I am going to explain to you later on this afternoon, But they didn't give me the one that I thought we should have had right from the word go.

~~Mr. Shirley: No, but the key words are on page 95~~

~~"He can hear thirty-five"~~

H-2122 follows

Sept. 5/73
3.35 to 3.40 pm
DT

~~Mr. McCallum~~)

~~and it was me the one that I thought we should have had right from the beginning.~~

Mr. Shibley: No, but the key words are on page 95.

He can borrow \$45 million against a formula which does not keep him
costs."

Mr. McCallum: That's right, to his cost and that's

Mr. Shibley: So that what it really amounts to is that
Canada Square can build a building which costs it less than \$45 million
and I am talking about all costs including interim financing and by
reason of the formula which has been settled, even though the all-in
costs, including design and interim financing may be less than \$45 million,
he is entitled under that formula to borrow the \$45 million if he can
get an appraisal in that amount.

Mr. McCallum: Yes.

Mr. Shibley: Yes, OK. Would you carry on?

Mr. McCallum: Yes. "Canada Square said \$34 a foot cost,
therefore allowed to borrow \$45 million but Moog is not held to cost,
only to appraisal."

Mr. Shibley: Yes.

Mr. McCallum: And that's all you have just said.

Mr. Shibley: Right.

Mr. McCallum: "Third, on his construction, because must
produce building with appraised value, not cost value, of 45 and can
build for less than this and he gets this money right off the top because
he was allowed to borrow \$45 million." Mr. Shibley, while I am busy
putting away these same things that I have been on so often, I have to
say to you that I do believe this may be a little earlier than you think.
The burn was still in me when I was writing this. There is no question
about it, sir.

Mr. Shibley: Mr. McCallum, I will help you.

Mr. McCallum: I think so.

Mr. Shibley: If you go to page 99 --

Mr. McCallum: All right. That just seems, you know,
if I was still heated and --

Mr. Shibley: Yes, you will notice on page 99, it has

Sept. 5/73
3.35 to 3.40 pm
DT

(Mr. Shibley)

get ~~the~~ "E.H. -115, J.M. - 90, total 205". Are those your docket hours?

Mr. McCallum: I wouldn't be at all surprised.

Mr. Shibley: Yes, and I can tell you that your total docket hours as of December 15 were only 220.

Mr. McCallum: Yes.

Mr. Shibley: So that only 15 hours were expended on this transaction subsequent to the time when this document was prepared.

Mr. McCallum: Oh, no, no, no. Look, I am not for a moment going to try and emulate Mr. Moog ⁱⁿ ~~and~~ what he scratches and files. I heard his evidence. But if I was writing a thing like that and I had the file out in front of me, I was only writing it again for my own consumption and whatever I did that for, it had nothing to do with this particular document.

Mr. Shibley: No, Mr. McCallum, I am only trying to use your docket hours to pinpoint a point of time.

Mr. McCallum: Yes, but I am *just saying* →

Mr. Shibley: Obviously you had your accounting department take off your dockets as of the time this document was prepared and it is within 15 hours of the rendered account.

Mr. McCallum: But I am ~~just~~ just not agreeing with you, with great respect. I am just not agreeing that I had the accounting department take off my hours as of the time that document was prepared.

Mr. Shibley: All right.

Mr. McCallum: It is just not so.

Mr. Shibley: Does that not help you ←→

Mr. McCallum: First of all, they don't take it off. They give us some sort of a thing off a computer. The fellows are all on computers.

Mr. Shibley: You are?

Mr. McCallum: No, not me.

Mr. Shibley: I thought your firm was one of the ones that was on computers.

Mr. McCallum: No, the firm do. All the dockets for

Sept. 5/73
3.35 to 3.40 pm
DT

Mr. McCallum)

he firm ←

Mr. Shibley: That's what I mean.

Mr. McCallum: ← With one exception that you are looking
t, are on a computer ☺ This one, they haven't been able to tame yet.

Mr. Chairman: Mr. McCallum ~~would say~~ ^{I was saying} he
ersonally wasn't computerized.

Mr. Shibley: Oh, I realize that. q There is no way
hey could computerize Jim McCallum but your docket time is computerized.

Mr. McCallum: No, it isn't. They just can't get me
o f conform.

Mr. Shibley: I see.

Mr. Chairman: I was going to say earlier that Mr.
ouser seems to be a much better docket man than you.

Mr. McCallum: Oh, he licks me hands down.

Mr. Chairman: I was noticing that he had people present
t his meeting which was obviously the same meeting as you were at and
ou didn't have them present.

Mr. McCallum: No, I know. Well, I am the despair
f that organization. T I don't know why you want to portray me so
adly out here in public. I can get it bad enough quietly.

Mr. Chairman: I am just looking at our comments earlier
n the day, Mr. McCallum. When you started off, I said you looked a
ittle draggy. It is in the transcript here.

Mr. McCallum: Yes.

Mr. Chairman: You look better this afternoon than you
id this morning.

Mr. Shibley: Carry on in any event. I was just
eferring to those hours as indicating the timing of the preparation of
his document, Mr. McCallum. I have taken it that it was well down the
ine because ←

Mr. McCallum: I know.

Mr. Shibley: ← Of the total for which your firm charged.
t was 220 hours. It appeared to me that 205 had already been expended
hen this document was compiled.

Sept. 5/73
3.35 to 3.40 pm
DT

Mr. McCallum: I know and I don't blame you for coming to that conclusion ~~a~~ but I just must tell you, it isn't so. It isn't valid.

Mr. Shibley: All right, let's go on.

Mr. McCallum: The tenor of the document leads me to know more where my tummy and my feelings ~~a~~ were at that time and I ^{obviously} ~~wasn't~~ ~~hardly~~ still had my burn on.

Mr. Shibley: Yes.

Mr. McCallum: For example, if it cost \$40 million, he pockets \$5 million on ~~complete~~ completion.

Mr. Shibley: Where are you now?

Mr. McCallum: I am over on page 96. Isn't that where I am supposed to be?

Mr. Shibley: 95.

Mr. McCallum: Oh, did I not finish it? Yes, I did, you know.

Mr. Shibley: No, I don't think ~~a~~ you did. You did the top of it but midway ~~to~~

~~Mr. McCallum: Didn't I go down to the end of that that?~~

(H-2123 to follow)

H-2123-1

~~No, I don't think you did. You did the top of it.~~

Mr. McCallum: Didn't I go down to the end of that?

Mr. Shibley: Said \$34 per foot cost.

Mr. McCallum: Well you know, I'm not loath to read it again but I just hate to repeat these things.

Mr. Shibley: I'm sorry. Go ahead.

Mr. McCallum: Okay. Where do you want me to start now, I'm not too sure?

Mr. Shibley: No. 3 on that page.

Mr. McCallum: All right. "On his construction because must produce building with appraised value, not cost value of \$45 and can build for less than this, and he gets this money right off the top because he was allowed to borrow \$45. Example: If it cost \$40 million he pockets \$5 million on completion. Of course, Canada Square should get more than actual out-of-pockets and substantial because of overhead, contingencies and profits. But cost usually includes those. Really three levels; out-of-pocket say \$35 million, add 20 per cent for \$7 million gave cost of \$42 million".

These figures are things, I think, very ~~early~~ in my thinking.

"Sugar - \$3 million".

Oh me, I wish these things weren't all out in the public.

Mr. Gaunt: That's a lot of sugar.

Mr. Deans: That's a lot of sweet.

Mr. McCallum: However, "Minimum profit equals 3 per cent times 40 equals \$1,200,000. Sugar equals \$3 million, Total \$4.2 million."

Mr. Shibley: Is this an endeavour by you to have some thoughts recorded as to what you thought Moog's profit might be? Is that what this amounts to?

Mr. McCallum: Yes. I wasn't really directing my mind at this. As you can see, I am off using inaccurate figures, and not trying to be accurate or precise at all. I tell you, I obviously was intending to use this at some time ~~for~~ to write a letter.

H-2123-2

Mr. Shibley: Well, I am wondering about that, Mr. McCallum. I wondered when I read it whether you used it for purposes of one of the two meetings you had in October of 1972 with the commission.

Mr. McCallum: No, sir.

Mr. Shibley: Whether you walked in with notes prepared to give them advice?

Mr. McCallum: No, I did not walk in with these. That is just for sure I didn't.

Mr. Shibley: All right. Okay. Well then, I have not seen any letter with this type of content.

Mr. McCallum: Neither have I, and maybe I never wrote it; that is what I am saying. I can't remember what I put it together for, but it sure looks a lot more like in the sense of writing a letter than anything else, and I guess I just didn't do it.

Mr. Shibley: All right.

Mr. McCallum: Goodness knows when I was going to write it, but I guess I didn't or *we'd have it.*

Mr. Shibley: Would you go on to 97 please?

Mr. McCallum: "After ^{the} building is up. Retains commercial space, therefore, makes profit on that for 30 years. But Hydro do participate in part of that. Example; \$40,000 a year on the ground floor, and 50 per cent of excess rent over \$6 on lower floor. Cost to him is \$4.92".

Mr. Shibley: Now, just before you go on. In respect to the ground floor; am I correct from your earlier evidence that that is 28,000 square feet?

Mr. McCallum: Who? That is 24,000 wasn't it?

Mr. Genest: 24,000.

Mr. McCallum: 24,000 there and then there was on the upper concourse, don't I remember, 63,500 or something like that, Mr. Shibley.

Mr. Shibley: In respect of the ground floor then; was Hydro getting \$40,000 a year for 24,000 square feet? Am I interpreting that right?

Mr. McCallum: If the 24,000 feet was all rented, they would get \$40,000.

Sept. 5/73
3:40 - 3:45 pm
CA

H02123-3

Mr. Shibley: That is all?

Mr. McCallum: Correct.

Mr. Shibley: They don't get \$6.

Mr. McCallum: By way of participation. No, no, we went over this. They get the \$6 for all ^{the} commercial ~~space~~.

Mr. Shibley: That is what I want to know. Do they get the ~~the~~ \$6 on the ground floor?

Mr. McCallum: Yes sir.

Mr. Shibley: Plus...

Mr. McCallum: This is all part of the 83,500 feet.

Mr. Shibley: Okay.

Mr. McCallum: This is the participation part.

Mr. Shibley: That is what I want to clear up.

Mr. McCallum: Okay.

Mr. Shibley: All right. ~~But~~ Carry on.

Mr. McCallum: "And ~~he~~ then it goes on, it says:

"He has to pay rent on this commercial from day Hydro move in". That is your \$6. "Even if commercial not used then". ^{Then} I have got;

~~He~~ "(2) Rent \$4.84. \$3.35 to pay debt which is total construction cost and profit. Leaves \$1.49". Then I have got a series of things which I can't read because of this corner. But I have got;

"Maintenance - elevators, mechanical equipment, repairs, heat..."

Mr. Shibley: You don't have to go through all that.

Mr. McCallum: Okay.

Mr. Shibley: You make some calculations I gather.

Mr. McCallum: So I make some calculations and I arrive at saying to myself, "Well, if there was \$1.49 in that category, and he spent enough where he had 80 cents left, then if he had 80 cents on \$1,200,000, he'd have ~~100~~ \$960,000 a year."

Now you see what the real calculation there is. Why don't we do that for a minute? Let's think about it. You have got \$4.84. You are going to use under this arrangement of ours \$3.24

H-2123-4

(Mr. McCallum)

to buy the building. \$3.24 will buy you the building in 30 years at 8 per cent. Right? So that leaves you \$1.60. From that \$1.60 that man has to pick up his maintenance, operating and so on.

Now I wasn't here when Mr. Witbeck gave his evidence, and I have never read his evidence since, so I don't know what he said, and I wouldn't want to tromp in on his toes. But initially, [REDACTED] when I first looked at the deal, we were talking not \$1.60 but \$1.45 if you remember, ✓

H02124-1 follows

Sept. 5/73
3:45 - 3:50 pm
JLP

(Mr. McCallum)

~~but when I first looked at the deal we were~~
~~talking not \$1.60 but \$1.45 if you remember, and we were~~ ^{busy}
trying to make calculations, rough ones, ^{as to} What would a man make
out of that kind of money?

And I referred you earlier to the fact, and I should
just bring you back for a minute, you have got to say to yourself
"this thing starts in the middle of 1977" and with what's happening
to the operating ^{co} ^{and} ~~costs~~ maintenance today, I certainly feel
that, out of the \$1.60, precious little will be left over and above
what will then become the base year for the whole of the operating
costs at that time. You have got to have in your mind that
30 cents certainly isn't going to take care of the janitoring and
anything that I would know would indicate that 50 cents won't take
care of the janitoring, ~~to~~ to give you a judgement of my own.
50 cents won't take care of it. The balance of the maintenance
and so on would be, it would get you up to about a dollar; I'd
say, from 70 to 80 cents. Anyway, in excess of 70 cents for the
~~re~~ rest of it.

I can't see any way at all that there wouldn't be a
base price of say 80 and 50, which would be \$1.30. If there would
be a maximum, in my judgement, left, it would be 30 cents a foot,
and that would be a maximum. To make my forecast into the future
that would be two things—^a hedge, because I may be completely
wrong; it could go up a lot faster, I guess it could go up slower,
but the way we're going I'm hunching it will go up even faster.

Mr. Shibley: That 30 cents would be applied against
\$1.2 million, being the net rentable, or an overall of \$1.5 million
net per ^{year.} ~~year.~~ Is that ^{correct?} ~~correct?~~

Mr. McCallum: That's right. If it turned out to be,
that would be it.

Mr. Deans: No, no.

Mr. Shibley: \$360, yes.

Mr. McCallum: \$360,000 a year.

Mr. Shibley: Yes, \$360,000 a year.

Mr. McCallum: Well don't ~~jest~~ [?] because if you were to take the ~~present~~ present value of that it's a considerable sum of money too.

Mr. Shibley: Yes, it is something over \$3 million.

Mr. McCallum: It's a considerable sum of money. But look, that's a guess; you'll have others maybe who will guess better for you, but I bet you they won't be very far off ~~of~~ that. It has got to be a ~~minimum~~ minimum to get up to \$1.30 ~~at least~~ ^{at least} out of that \$1.60.

Mr. Chairman: Canada Square ~~is~~ ^{was} obviously writing in here something for inflation which I suppose is a rational thing for them to do.

Mr. Shibley: Well, they all were.

Mr. McCallum: They didn't write in enough initially, as far as I can see. I think that they all guessed wrong. I think that we were guessing and that others did too, and if you get them in and ask them what it is going to cost them in 1977 that there will be ~~people~~ ^{people} who are experts in the field ~~who~~ ^{who} will say that it is going to cost them every cent of \$1.45 and more. I'm guessing more than \$1.45 in 1977, when I say that's what they've got to get to.

Mr. Shibley: The question is, ~~however,~~ ^{however,} Mr. McCallum, for example, Y and R put in a ~~new~~ proposal with maintenance at \$1.25; no matter that they were guessing wrong, Hydro had the option to take that proposal.

Mr. McCallum: Yes, but you know, Mr. Shibley, I don't know how much ~~attention~~ ^{attention} you could pay to a figure when a man is asked to provide the figure that he really counts into two; it doesn't much matter to him. In the final analysis ^{is} ~~now~~ how much he gets in a lump sum. And sometimes I think we ~~are~~ are inclined to pay a little too much attention in these proceedings to a split that the man makes himself; maybe that's a little sales, he gets it one way or another to suit himself.

Sept. 5/73
3:45 - 3:50 pm
JLP

Mr. Shibley: Mr. McCallum, I'd like to go back and ask you to do what you were going to do earlier, and that is to explain for the benefit ~~of~~ of the committee what is your understanding of the actual wording of the formula which formed part of the contract referable to the ~~same~~ ^{appraised} value of this property.

~~Mr. McCallum: Okay, I wanted to do this as well as I could for you, and I have given some thought to it, and if I can just refer to notes as I go.~~

(Tape H-2125 follows)

Sep. 5, 1973
3:50-3:55 pm
V.H.

~~McCallum~~ Okay, I wanted to do this as well as I could for you and I have given some thought to it and if I can just refer to notes as I go ¹⁻ just bear with me for a few minutes. I will try and tell you.

The formula refers to two things. If the appraised value of the building project is less than ~~forty-four~~ ^{\$44.4 million} without reference to the Hydro leases, Hydro's total rent payment is to be reduced by three-quarters of the ~~the~~ proportionate reduction. Just don't let me forget to come back to a discussion of how they got the three-quarters because it really is a full reduction in respect ^{to} ~~of~~ the cost of the building; the thing that is excluded is the maintenance. There's a very ~~logical~~ ^{rational} reason for taking three-quarters of the total.

Secondly, similarly, the amount which Canada Square can borrow on its first mortgage is to be proportionately reduced.

What Hydro is really doing is buying a building and what this formula is really doing is saying that if the building which they are buying is worth less than \$44.4 million, again without thought of the Hydro leases, then the amount which Hydro must pay for the building must be reduced. At the same time, therefore, the amount which can be borrowed by Canada Square to pay for the building must also be ~~reduced~~; obviously that's the case because if the building is not worth ~~forty-four~~ ^{\$44.4} million, then Canada Square don't need to borrow ~~forty-four~~ ^{\$44.4} million to build it.

So those two things work together.

What is to be measured in this formula is the appraised value. That phrase simply means the value as determined by an appraiser. The only operative word in that phrase is the word ~~value~~ "value". It's just the same sort of thing ^{as} you have

Sep. 5/73
3.50-3.55 pm
V.H.

(Mr. McCallum)

ran into many times in your life; your people speak of assessed value - well, what's assessed value? Assessed value is value which is to be calculated by an assessor and for convenience, we have always and always called it assessed value. If you going to call value made by an appraiser, you call you it appraised value. The only word that is of importance is the word "value". The word "value" is one of common usage when applied to a building. You often hear it used in connection with a building and many other things. You speak of the value of a car; the value of a house; the value of a building.

In this case, the word "value" really means the intrinsic value of the building itself, the structure, which

It's the value which attaches to that building independently of anything else.

Our problem in this case is to value a building which has just been constructed, which is therefore brand new. It must be valued apart from the land upon which it sits because Hydro certainly are not going to pay for the land which it owns. In addition to that, the building ^{is} in no sense ~~is~~ going to be exposed to the market for sale, so really there can't be any question that we are trying to find the market value of the building.

Finally, the building must be valued without regard to the Hydro leases or otherwise Hydro would simply be putting a value on the worth of their own covenant on the income stream. And they wouldn't in any sense be trying to value the brick and mortar and labour that went into that building.

Now, those constraints are very real and make this a very individual, unique value that must be found. When you

Sep. 5/73
3.50-3.55 pm
V.H.

(Mr. McCallum)

take into account that what is being sought in this formula is a measurement of the value of the type of building I have just described, you will immediately be able to appreciate why it would be inappropriate to use as a measuring stick market value. That is something that you were on to the other day. Because, as I say again, no sale is contemplated and indeed, any sale would be difficult, because no land goes with the building and other reasons that you can think of. I think Mr. Renwick suggested the other day that he was persuaded that if they ^{had} meant to say market value, they would have said market value and I agree with him wholeheartedly. Market value was not was intended or that's what would have been said.

Under the circumstances of this case, Hydro was perfectly prepared to make periodic payments which would effect the purchase of this newly-constructed building, whose value or, for purposes of clarity I guess I should call it intrinsic value, whose intrinsic value is at least ~~\$44.4~~ ^{\$44.4} ~~forty-four point four~~ million.

H-2126 follows

Sept. 5/73
3.55-4.00p.m.
B.A.

H-2126-1

(Mr. McCallum)

~~where the value was determined of a building, I agree. I should~~
~~call it intrinsic value, where intrinsic value is at least~~
~~\$44.4 million.~~ But if its intrinsic value is not worth that much,
Hydro wants a reduction in its periodic purchase payments.
That is what they are doing. In measuring the intrinsic value
of this brand new building, where there is no question of
depreciation, you simply calculate its replacement or its
reproduction cost. That is, the ~~and~~ ordinary costs experienced in the
market by ordinary contractors during the period of time that the
building was being erected and allowing for a normal and reasonable
profit for a contractor. That is all you are doing. Now, when
Hanscomb Roy, who are quantity surveyors, cost this building after
it is up and in place, they will be ~~be~~ making an estimate of its
reproduction cost, having regard to what it would have cost an
ordinary contractor, at ordinary and reasonable prices, to
reproduce that building during that same period of time.
They would not be costing it having regard to Moog's cost.
They wouldn't be trying to have the benefit of his better buying power,
if it is, of his better whatever he says he has, if it is, they would
be saying, and therefore Hydro would be saying, we are prepared to
pay for this building what it would cost an ordinary person to
put it up in those times providing they were paying reasonable
prices and labour was reasonably efficient, and that is what
replacement cost is, and that is the sort of thing that quantity
surveyors do. And that is what will be done here.

Hanscomb Roy will, of course, include in that calculation
a reasonable construction profit for that mythical or ordinary
contractor. That is, again, perfectly appropriate that Hydro
should agree to pay for a building a sum which would include a
reasonable contractor's profit. You don't expect to get it without
any return to the person who put it up.

In addition to the value of labour and materials, as




Sept. 5/73
3.55-3xxx 4.00p.m.
B.A.

(Mr. McCallum)

measured by what it costs ordinary contractors, which is not Canada Square because we are not talking about him, there must, of course, be added the cost of interim financing and architects' fees. Those are legitimate costs of reproducing the building, and they have to be added in. Now, when you get a total of the ordinary costs as calculated by the quantity surveyor, and you include ^a ~~the~~ reasonable contractor's profit, the cost of his interim financing and the costs of his architect's fees, you have arrived at the replacement cost of that building. ON the facts of this case you have arrived at the value of that building. And under this formula, that ~~reproduction~~ gives you the answer to what the value is.

It wasn't intended to be obtuse. It was that there was serious argument about making very clear that there should be the words "reproduction cost" used, and I tell you Moog ~~has~~ has a hang-up on using that word. He just wouldn't listen at any time to what I thought ^{would have} ~~made~~ sense, that reproduction cost could be, and that is different from where we started, Moog's ~~cost~~ ^{cost} that reproduction cost ~~is~~ should be an appropriate way to measure the value of that building, and that is why we came around, finally, to the use of "value" which I say is the same thing, and what he ~~says~~ says, I don't know. You can ask him. He did it here, he has done it with me a dozen times. Every time you ask him what he wants he starts talking about the market. I say that has no part to do with it at all.

In any case, Hydro is prepared to pay exactly what that building is worth, and that means its value, and they wanted to be sure that if the building did not have that value they would not have to still pay \$44.4 million, and what is more, they didn't want Canada Square to be able to borrow more than the value of the building. To put it at its very simplest, if when the building is up Hanscomb Roy take off the ordinary or market ~~rate~~ ^{cost} for the labour, materials and incidentals that are referred to in their



(Mr. McCallum)

reports, and they add in a reasonable profit, reasonable interim financing costs and reasonable architect's fees, they have given us the best estimate of the value ~~value~~ of that building as it will be at that time.

Mr. Shibley: When you use the word "value" in that statement, Mr. McCallum, or that evidence, you are using that term as a term ?
of art as employed in the contract. ?

Mr. McCallum: And as employed in what I call the formula, I sure am.

~~Mr.~~

(Tape H-2127 follows)

Sept. 5/73
4 - 4:05 pm
C.B.

~~XXXXXXMcCallumXXX~~

~~(Mr. Shibley)~~

~~employed in the contract~~

~~Mr. McCallum: And as employed in what I said the~~

~~Yamaha I sure am.~~

Mr. Shibley: I am personally in your debt because it's the clearest outline that I've heard yet as to what Hydro at least intends to be the mode of computation of that valuation.

Mr. McCallum: Well, as you can appreciate I hope I've made it very clear to you in addition to that, I have not been try to describe the cost to Moog, which was the cost that I initially sought to get in the formula. I have told you that that's where Hydro started and certainly we tried to reproduce what had been done and we just didn't succeed, and this ^{is} what we have come up with is not what we started out to get, but I think that the ~~current~~ reproduction cost, as I've ~~dis~~ described it is nothing that is going to injure Hydro; on the contrary it is something that Hydro can live with, if their reproduction cost in fact is going to be lower than \$44.4 million, I believe, and it is certainly my opinion they'll get a reduction in their rent.

Mr. Shibley: Now when you talk about reproduction cost, you mean reproduction cost, as ^{at} ~~at~~ the date of installation of the work or material.

Mr. McCallum: Historically, yes.

Mr. Shibley: In this building?

Mr. McCallum: Yes.

Mr. Shibley: SEcondly, why you use that term, I take it, is that if Mr. Moog, by whatever means, is able to, say, do a certain part of the job for \$800,000, whereas it would normally have cost a million to have that work done, to have that work reproduced

Sept. 5/73
4 - 4:05 pm
C.B.

Mr. Shibley)

to use your term, by any other contractor, ^{it's} the latter figure that is intended to be included.

Mr. McCallum: That's right, and we ~~would~~ought not to be able to take away from him the fruits of his special abilities.

Mr. Shibley: Yes, I understand.

Mr. McCallum: And we ought to be prepared to put it another way, to pay what the ~~extra~~ ordinary man would pay in the sense of "ordinary" under reproduction *cost*.

Mr. Shibley: Conversely, of course, if ^{it's} costing Mr. Moog a million to do certain work whereas it could have been done by others for \$800,000, you are not prepared to allow him that \$200.

Mr. McCallum: That's right.

Mr. Shibley: So the only variation in your thinking, in the interpretation ^{of that clause} ~~of that clause~~ from cost, is the differential....

Mr. McCallum: From Moog's cost, keep using that, and we will be together.

Mr. Shibley: I understand, from Moog's cost is the differential that might emanate from now treating ^{it} as reproduction cost.

Mr. McCallum: Yes, plus one other thing, that Moog's cost doesn't have in it. Moog's cost doesn't have in it any reasonable return ~~for~~ for the contractor doing that work.

Mr. Shibley: All right, so ~~you~~ you're prepared to add that in.

Mr. McCallum: ^{This does have} ~~you have to add~~ that in. ~~that in~~

~~that~~ Mr. Shibley: On the other hand he is contending, or he may—I'm sorry, he didn't contend for it; I think he left it up to the appraiser, as to whether the appraiser would allow him royalties.

Mr. McCallum: That's what I heard him say.

Mr. Henderson: Mr. Shibley....

Mr. Deans: I want to ask a question about that.

~~Mr. Henderson~~

Sept. 5/73

4 - 4:05 pm
C.B.

Mr. Chairman: Mr. Henderson.

Mr. Henderson: Mine is just a simple little question here of ~~about~~ clarification. You suggested ~~the~~ the reproduction costs at this ~~at~~ date or the date of take-over? I understood the other day in the evidence that the reproduction costs in 1975 would be the figure.

~~Shibley:~~
Mr. ~~McCallum~~: No, no, so let's say at the present time —

Mr. Henderson: That's clear then is it? Because I get the other interpretation.

~~Shibley:~~
Mr. ~~McCallum~~: At the present time it is costing so much to do, let's say, the foundation work, and let's say that ...

Mr. Henderson: That's ~~suggested~~ appraised today then is it?

~~Shibley:~~
Mr. ~~McCallum~~: That's right.

Mr. Henderson: Okay.

~~Shibley:~~ ^{as of}
Mr. ~~McCallum~~: It's today's date we are talking about ¹ reproduction costs.

Mr. Henderson: That answers it then, thanks.

Mr. Deans: I want to...

Mr. Chairman: Mr. Deans.

Mr. Deans: I want to try to muddy up some very clear waters. What in your opinion would this normal contractor reproducing that building, taking into account the difference in costs over the years, have to pay Mr. Moog royalties for the use of ~~his~~ his — what's it called —

Mr. McCallum: Whatever, I know what you mean.

Mr. Gaunt: VVR.

Mr. Deans: VVR system; would he normally have to ~~pay~~ pay royalties for the use of that system?

Sept. 5/73

4 - 4:05 pm

C.B.

Mr. McCallum: Well, I think it is like anything else. What I think would happen is the following. If he wanted to use that same system, this is, let's say, our ~~quantity~~ quantity surveyor and he said, "how much would it cost me to get that system", and he concluded that Moog had said, "I won't let you have ~~this system unless you pay me an extra million dollars for royalty.~~
~~He would have to be paid immediately and he would~~

H 2128 to follow

Sep. 5/73
4.05-4.10 pm
V.H.

(Mr. McCallum)

"I won't let you have this system unless you ~~give~~ ^{pay} me an extra million dollars for royalties." He would turn on his heels immediately and say, "I will endeavour to reproduce the utility of that system as best I can and I won't accept that price." And he would go and get a market price to replace the utility of that as best he could and without paying that kind of an exorbitant matter. If, on the other hand, he concluded that he could have the utility of what we have heard described, ~~without~~ ^{without} my commenting one way or another ~~as~~ ^{as} a very excellent system, for a reasonable price that he thought was much in line for the utility he was ~~gim~~ going to get out of it, then I think he would take that price which might indeed include a royalty. He's not going to get the royalty, you understand, but in the costing that's how he would do it.

Mr. Deans: Well, he will get the royalty if the royalty is calculated into the cost. If it is the appraiser's opinion that ~~the~~ ^{the}

Mr. McCallum: Mr. Deans, he'll leave the benefit of it.

Mr. Deans: Yes ~~the~~ ^{the}

Mr. McCallum: ~~We~~ ^{we} are going to give him the benefit of it under this theory. ~~We~~ ^{we} are going to give him the benefit of all the specialties that he's got, ~~the~~ ^{the} special savings, that he can affect over what the ordinary man can affect.

Mr. Deans: Okay. And if by some appraiser's determination that was worth half a million dollars for whatever, I don't know, it doesn't matter ~~xx~~ what the figure is, but if in the appraiser's opinion, the normal construction company would have to pay in addition to the base price a half million dollars in order to use that system, then that would be a half million dollars more that Mr. Moog would be able to draw down or add on towards the \$44.4 million.

Sep. 5/73
4.05-4.10 pm
V.H.

Mr. McCallum: Without causing a reduction but only, as I said a few minutes ago, only if the appraiser came to the conclusion that what he was seeking to get had to be the Moog system. If he said to himself, "that's much too expensive to produce the result I want, which is to air condition the room, ~~it~~ and I won't go for that much. ~~It~~ ~~a~~ just doesn't payme and that isn't reasonable," he would not do that in his valuation. That is just what a quantity surveyor would refuse to do.

Mr. Deans: We hope!

Mr. Chairman: Now, Mr. Renwick.

Mr. Renwick: Yes. I would like to ask two or three questions simply for the purpose of trying to rule out a lot of the misconceptions that were, if I may say so, that were floating around about ~~mean~~ the meaning of this term "appraised value". I am referring specifically to the letter of October 18 ~~and~~

Mr. McCallum: Wait'til I get mine. Okay.

Mr. Renwick: I take it, having regard to previous discussions, and I also am extremely grateful to you for that very concise statement of the problem, I take it, therefore, that Mr. Moog's insistence, which is understandable, that his costs be private to him and were not disclosable to Hydro is irrelevant in your viewpoint, from the point of view of the obligation imposed upon the ~~appraiser~~, appraisal firm under the letter of October 18?

Mr. McCallum: I don't know that I would want to go ~~a~~ quite as far as saying they are irrelevant. We can do without them.

Mr. Renwick: You don't need them?

Mr. McCallum: We don't need them.

Mr. Renwick: Right.

Mr. McCallum: But they might ^{really} be quite helpful. You know, after all, a quantity surveyor is going to look at all the detailed plans and he is going to be putting costs on it and he could miss something, ~~and~~ the man may well want to say ~~here~~ here are my costs themselves, and you don't understand that

Sep. 5/73
4.05-4.10 pm
V.H.

(Mr. McCallum)

contractor had to do thus and so and you couldn't get steel at that time. "I don't know what but I could see how it might come into it.

Mr. Renwick: I can understand that and, therefore, Mr. Moog's concern to maintain his costs as private is not being arbitrary on his behalf for the purpose of defeating the purpose of this appraisal letter.

Mr. McCallum: No, it really ~~isn't~~ ^{isn't} ~~didn't~~ ^{long}

Mr. Renwick: It's not an arbitrary refusal on his part of something which is essential from ~~long~~

Mr. McCallum: There are some of us who couldn't understand it but he's entitled to it and we won't suffer from it if we don't get it.

Mr. Renwick: And he would be entitled to disclose such costs as he felt he wanted to discuss ~~or~~ ^{disclose}.

Now the second point is, I take it that all this discussion that there would be some kind of a meeting between the appraiser and Canada Square and Hydro for the purpose of ~~deciding~~ within certain limits, which elements were to be included or not included, ~~it's~~ ^{it's} just not necessary; it's not part of the appraiser's job.

Mr. McCallum: I really don't think it will be necessary because -- and I suppose that is what is called going out on a limb -- I don't think it is all that vague and indistinct ~~see~~

Mr. Renwick: No.

Mr. McCallum: ~~see~~ and I just don't think it will be necessary.

Mr. Renwick: So that the purpose of the letter of October 18 was to select an expert firm in this field to come up with a figure which when they come up with it, if they do a conscientious professional job about it, will be not debatable.


Sep. 5/73
4.05-4.10 pm
V.H.

~~MMX~~ Mr. McCallum: Really, I hope that's what it is.

These people are people who have been in the business of doing exactly this sort of thing for a long time. They do a great many valuations. I suppose their chief client originally when Red Chaffe was running the company was Great West Life; you will remember back ^{to} there. They are very well known people doing exactly that.

Mr. Renwick: Yes. Yes. So I take it that the contractor's bid if one were back to -- maybe I am going to overstate this but to ~~him~~ help me

H-2129 follows



Sept. 5/73
4.10-4.15p.m.
B.A.

(Mr. Renwick)

~~that the Hydro had gone the original route that they had planned, that is, incurred their own architects' fees, incurred their own costs for interim financing, and let the contract on tender and taken, give or take the quality question that they might want to assess, but for practical purposes, taken the best tender that they got for the job, that in some way what you are saying that this formula means relates to what that cost would have been had they gone that route but that you must reconstruct it now in a hypothetical sense.~~ I take it that had Hydro gone the original route that they had planned, that is, incurred their own architects' fees, incurred their own costs for interim financing, and let the contract on tender and taken, give or take the quality question that they might want to assess, but for practical purposes, taken the best tender that they got for the job, that in some way what you are saying that this formula means relates to what that cost would have been had they gone that route but that you must reconstruct it now in a hypothetical sense.

Mr. McCallum: I don't think that is unfair. The major difference, though, I am not sure that you see it, is that had we made that election then, we would then have been starting today and the historical construction period would have been from let's say, today 1973, on into 1977, and the material difference, and I suppose one of the great advantages we have sitting here today - there are lots of disadvantages with all this hindsight - but there is one real advantage we have, we have been able to see an overwhelming rise in all the ingredients that go into accommodation and structures over the past six months, but certainly in the last year. I feel, for instance, that if there were initially problems and, let's say, too much elbow room, in the Hydro contract that fortune has smiled on them and has frowned on Mr. Moog. The interval has worked heavily in favour of Hydro, and today, it is my judgement that the contract is a good contract and that they will benefit mightily from the fact that costs have gone up so much. If we were starting to do a tender, we would have to get all the drawings ready from then until now, which they wouldn't have them ready any more than now. Now we would be calling for contracts instead of the building is well on its way up, you can see it poking its nose above the ground.

Mr. Renwick: I understand that distinction and reservation, I know you can't equate the two of them exactly, but what I ~~mean~~

Sept. 5/73
4.10-4.15p.m.
B.A.

Mr. McCallum: The analysis, I think you were thinking of, in the sense of the analysis or the work that the man would do would not be ~~it~~ dissimilar.

Mr. Renwick: Yes, all right. Now, I take it ~~that~~ that whatever the origins of why you felt that this was of real worry, in other words, in all of your documentation, ~~that~~

Mr. McCallum: I know.

Mr. Renwick: ~~that~~ this was bugging you right ~~from the very beginning.~~

Mr. McCallum: Sure did.

Mr. Renwick: Now, whether it was your own ~~whether it was being specifically asked to do this, or a combination, I don't think matters.~~

Mr. McCallum: ~~I will tell you what~~

(Tape H-2130 follows)

Sept, 5/73
4.15 to 4.20 pm
DT

(Mr. Renwick)

expertise of whether it was because of being specifically asked to do this or a combination, I don't think matters.

Mr. McCallum: Well, I will tell you what it was ~~was~~ primarily. I was convinced that Moog had made a deal with Candy in which he had said, 'If the cost goes below \$34, you will get ~~the~~ a reduction in rent.'

Mr. Renwick: Yes.

Mr. McCallum: And he wouldn't put it in writing and he never would, ~~and~~ I just don't think that -- and Hydro thought that that was the kind of a deal that they were getting.

Mr. Renwick: Is this the solution, in so far as there is a solution in words, ~~in~~ to that concern which is reflected right throughout your documents or your own internal memoranda?

Mr. McCallum: Well, it doesn't do much for me in the sense of, if a man makes a deal, I think he ~~is~~ is supposed to stay in the deal and particularly in this kind of a business. You are a big boy and you are grown up and you make a deal with a man like Candy, you should stick to it. He didn't stick to it and as you can see, ~~he~~ ^{he} not only didn't stick to it but he tried to go a long way from it. The documents will demonstrate that he was trying very hard to have market value to and including leases. He was trying to value the income stream, and that kind of thing was not finding much favour with me, not a little bit, ~~and~~ the more he tried, the ~~as~~ angrier I would get because it just didn't seem to me -- he was ~~back~~ ^(backing) right away from what I understood to be a promise and walking just as far as he could go in the opposite direction.

I think that we have gone a very long way to bring him back down to where we can live with it but we never did get him ~~back~~ back to where he started from. He never lived up to the promise that I understood he gave. That's the soul of it.

Mr. Renwick: Mr. Chairman, I think that answers my questions.

Mr. Allan: Mr. Chairman.

Mr. Chairman: Mr. Allan.

Mr. Allan: The thing that still bothers me ~~is~~ are these

(Mr. Allan)

words "appraised value", and I am not sure from Mr. & McCallum's statement that the appraised value will be the value of the construction that was done in this year, during this year ~~and~~. If, on the other hand, the appraised value is the value of the completed building, then I think that Mr. Moog has had all the advantage of all the inflation.

Mr. McCallum: Well, you see, Mr. Allan, to get to that position, you have got to assume that the exercise one goes through in 1975 is to say, ["]what is the value of a building?["] Assuming we start now and wrap it up as quickly as we can and that really isn't what either party had in its mind, sir. What both parties had in their mind was when we stand and look at this building which has been put up over the past three years - here we are in 1975, looking at it - now, when we stand and look at that building and we say to ourselves ["]What is the value of that building today?["]

Mr. Allan: ~~Today~~ Today?

Mr. McCallum: Not three years from now.

Mr. Allan: No, but today [←]

Mr. McCallum: So ^{he} ~~he~~ hasn't got the benefit of ^{inflation} ~~completion~~.

Mr. Allan: Today, ~~and~~ a very tidy profit would be the inflation that will occur during the construction of that building.

Mr. McCallum: Thereafter, from 1975 to 1978 ^{or}

Mr. Allan: Well, but up to 1975.

Mr. McCallum: But you see, sir, we can't have it both ways. If we have a deal that says that we are going to pay $\frac{1}{3}$ let's say, the market costs, we are, I am sure, making the deal on the concrete long before today. We have got -- I don't say -- the average man, let me not talk about him -- I am building a building. I don't wait until that concrete is ready to be poured as it suits my convenience to make my deal. When these people in this business sense that prices are going up, that's when we run into the Tanenbaums and others and make our deal as fast as we can because two days, two hours from now, he ~~will~~ get wind that it is going up and his price will go double.

Mr. Allan: The point of my concern is that there is going to be a very great difference between cost and the value of that building when you make the appraisal.

Sept. 5/73
4.15 to 4.20 pm
DT

Mr. McCallum: ~~From~~ there is going to be a great difference between Moog's cost, I would think →

Mr. Allan: Yes, and whether you have allowed a profit or not, you have enabled the man to make a profit.

Mr. McCallum: There is no question. ~~is~~

Mr. Allan: And perhaps a very considerable profit, just the ~~moment~~ amount of the inflation.

Mr. McCallum: I don't like you ^{saying} ~~say~~ I have enabled ^{him} ~~him~~. There's not going to be that measurement of the profit, sir. If there is going to be any contract - if there is going to be any contractor's profit taken into the calculation of the replacement cost, it has to be a reasonable one ~~and~~ I suppose that's a matter of judgement at the time and I am not quarrel^{ing} with you in that sense. I am ^{just} ~~not~~ ~~buying~~ buying that it equals the inflation.

Mr. Allan: I don't want to come ^{back} ~~to~~ the desirability again of having an expert in the field of appraisal give us some idea of what →

Mr. McCallum: Let me say something →

Mr. Allan: Another expert!

Mr. McCallum: Well, let me say something about ~~this~~ that because Mr. Allan has mentioned it several times ~~and maybe you~~ ~~will forgive me for just --~~

(H-2131 to follow)

H-2131-1

(Mr. McCallum)

~~about that, because Mr. Allan has mentioned it several times,~~ ¹⁴ and if he'll forgive me for just mentioning it in public, from the time you first mentioned it I have wondered how best to give you that feeling of satisfaction and knowledge that you want, that you are groping for here in these proceedings.

The only thing I have to remind you is that in all the experience that I have had with appraisers, it generally isn't there function. They will ~~be made~~ make a valuation according to how they are told by the lawyers, whatever it is they say has to be taken into account. You won't be familiar, but it is a legend in this town how for many years, under expropriation, you had to find the value to the owner. And old W.E. Bosley was known all over the province as saying, ~~one of~~ ^{of} the dean appraisers, and you know, when the lawyers, who didn't know him would say "You know, Mr. Bosley, what we have to find here is the value to the owner". "Huh", said Bosley, "I'm not going to give you any help on that". The reason was that he would give you all the help in the ~~find~~ world at finding value, or valuing the market, but he said "The value to the owner, which is what the law wants you to require, brings in a subjective test, and I'm not qualified to help you on that". So I am simply making a point that sometimes the appraisers aren't the ones who will give you the help that you are looking for either, sir.

Mr. Shibley: I am wondering, Mr. McCallum, if you could help us in this way. Would it be prejudicial to either party to ask Chaffe, MacKenzie and Ray Ltd. or some representative of the firm that is mentioned in the agreement as the suggested appraiser, ¹

Mr. Genest: It would be, ~~yes~~

Mr. Shibley: Would it be prejudicial to have such a person come and tell us what that person will include in 1975/76?

Mr. McCallum: I think it would, sir.

Mr. Shibley: I just want to make that clear. I think it would myself.

Mr. McCallum: ~~.....~~ If we are going to have an impartial valuation made at that time you don't like to muddy the waters and make them partial one way or another. I think that ²

H-2131-2

(Mr. McCallum)

wouldn't be wise for us.

Mr. Shibley: Okay.

Mr. W. Hodgson: Just one question, I seem to be mixed up now since Mr. Allan's question. I have the understanding that appraised value would start from day one when this building would start.

Mr. McCallum: That is true.

Mr. W. Hodgson: That is true. Mr. Allan, I understood your question to say the appraised value would be in 1975 or ~~not~~ 1976.

Mr. McCallum: He is concerned.

Mr. W. Hodgson: But my understanding is they start appraising the cement that goes in the buildings, how much a cubic,

Mr. McCallum: They are trying to reproduce the building.

Mr. W. Hodgson: And everything is to go on until it is finished,

Mr. McCallum: That is right. They are trying to reproduce the building as it were had it been built under ordinary circumstances by an ordinary contractor and withstanding they are at the same period of time all completed.

Mr. W. Hodgson: Well I am glad we got that cleared up.

Mr. Shibley: That is provided Hydro's interpretation, as you stated, is accepted and not a different interpretation for which Mr. Moog may contend.

Mr. Genest: That will be settled in the Supreme Court of Canada.
Mr. Shibley.

Mr. Chairman: I hope not. Well gentlemen, I think we should take a recess here. I may say that Mr. Shibley is still very hopeful of getting through Mr. McCallum this afternoon, as well as Mr. Steadman who has been here waiting patiently as well. So if we can be back here by twenty five to five.

H-2132-1 follows

Sept. 5/73
4.35-4.40 p.m.
B.A.

The committee resumed at 4.37 p.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. The clerk has instructed me I must not smoke my cigar any more, the air-conditioning is off. I think the real problem of the smoke is Mr. Hodgson's pipe, so I have agreed to put out my cigar if he will put out his pipe. He hasn't agreed. If he smokes his pipe I will have to get my cigar back. I apologize to all of you. I realize there is a real haze in here and I apologize.

~~Mr. Chairman:~~

Mr. Renwick: Mr. Chairman, could I come back to a couple of matters now. ~~First of all, Mr. Chairman,~~ First of all, Mr. Chairman, I would like to say that with the explanation that Mr. McCallum has given, and with, I suppose, ^{the} conditioned view which I ~~have~~ have that, after all, the language is in a legal document and maybe the ~~Carriage of it~~ ^{to some} ~~assessment~~ extent lies with the lawyer's assessment of the meaning, I don't myself feel any compelling need, as I did the other day, to now have someone from an ~~appraiser~~ appraiser firm give evidence, but that may be because ~~being~~ being a lawyer I am conditioned to that way of looking at it and perhaps Mr. Allan and others would think differently. But, my question, and I believe that certainly Mr. Hodgson's comment on Mr. Allan's question to Mr. McCallum clarified that problem from my point of view, I take it, ~~let me~~ let me put it bluntly and ~~not~~ having nothing to do with what the ultimate facts will be, that if Mr. Moog builds the building for \$40 million or \$41 million, and if on the appraised value, the determination of the value, because of perhaps even on a historic basis an incipient building, in of the inflation costs, that this appraised value comes up to \$44.4 million or more, then that seems to be the only broad hatch through which Mr. Moog could make ^a substantial profit on the transaction.

Mr. McCallum: Yes, sir.

Mr. Renwick: All right. Now, may I return to my other....

Mr. Shibley: Are you talking about ~~profit~~ construction costs, or profit on construction?

Sept. 5/1973
4.35-4.40 p.m.
B.A.

H-2132-2

McCallum:

~~Mr. Chairman:~~ No, he is talking about the difference between what is going to be borrowed and what it would cost to ^{it} put up.

Mr. Deans: The difference between what is borrowed and what is actually spent.

Mr. Shibley: Well, again, I would suggest, Mr. Renwick, that that is not really a complete statement.

Mr. Renwick: I ~~wasn't~~ ^{thought} it was.

Mr. Chairman: I don't think he intended it to be.

~~He~~ He used his words, I thought, very carefully.

~~Mr. Shibley: I am concerned that~~

(Tape H-2133 follows)

Sep. 5/73
4.40-4.45 pm
V.H.

(Mr. Renwick)

~~I thought it was~~

~~He said~~
Mr. Renwick: No.

Mr. Shibley: I am concerned, I think the witness has said that there were three headings of profit possible.

Mr. McCallum: Oh yes, but he said the very broad

~~one~~

~~Mr. Renwick: Yes, I am talking~~

~~Mr. McCallum: Agreed~~

Mr. Renwick: There is a legitimate profit in the operation. As far as I can see, I am talking about this matter which was of concern throughout these things, throughout this matter, ~~of~~ what Mr. McCallum in his memorandum has referred to as the sugar in it.

Mr. McCallum: That's right.

Mr. Renwick: ~~and~~ that that now rests solely upon and nobody may ever know

Mr. McCallum: That's right.

Mr. Renwick: ~~and~~ that if the appraised value comes out using the interpretation of the meaning as given by Mr. McCallum and having regard ^{an} to incipient inflation factor even over the historic period, ^{do} Then you come up to \$64,400,000 or more to the extent that Mr. Moog's cost has been less than he gets the kind of profit that Mr. McCallum ^{as} was I take it ^{is} as endeavouring to protect Hydro against an ~~and~~ inordinate take.

Mr. McCallum: Agreed.

Mr. Renwick: ~~I may not~~ -- there may be marginal matters involved in that

Mr. Shibley: No. I just want to ~~make it clear~~

Mr. Renwick: ~~and~~ but I wanted to clarify ~~my~~ my

Mr. Shibley: ~~and~~ you were talking about profit on construction of the building.

Sep. 5/73
4:40-4:45 pm
V.H.

Mr. Renwick: ~~Yes~~ Yes.

Mr. Shibley: There are other elements of profit built into this type of arrangement.

Mr. Renwick: Right. I understand.

Now, could I go back to that question very briefly about ~~the~~ London Life and the other events. Mr. Shibley, I check^{ed} with Mr. Walker^{and} ~~and~~ found the reference. The reference is in Volume 8, page 779-1 and given, if I may use the phrase, the vagueness of Mr. Cronyn's recollection of date, he was talking about December and he referred to monthly meetings of London Life.

Mr. Walker: That was Smith.

Mr. Renwick: I am sorry, Smith ~~that~~ referred.


~~Some~~ ~~Smith~~ ~~referred~~ to having met with Cronyn at a London Life meeting which were monthly meetings and he referred to a December 1972 one. But in any event (a) there were monthly meetings and (b) the date isn't all that material to my questions. If Mr. Shibley would look^{it} ~~it~~ would help me with the sequence of that damn time sequence from around the end of October through to say mid-November and taking into account Mr. Cronyn with Mr Fleck and those other matters all of which tied into that point in time, I am interested in whether or not something involved with London Life relates to the problem which lead me to ~~suggest~~ suggest that Mr. Smith come back. I am not using London Life as an institution, I am using the time sequence where something took place.

Mr. Shibley: All I can do for you^{is} I am looking at my brief and from October 23 and following give you the chronology as I have outlined it.

Mr. Renwick: Yes, if you could, give us those dates.

Mr. Shibley: I will very quickly give it to you.

On October 23, there was a meeting between Mr. Moog and Mr. McCallum et al as per the docket entry. Then Mr. McCallum and Mr. Houser, Coles, Lamb, Candy. Bradshaw said that's when he learned and he was surprised to learn for the first time



Sep. 5/73
4.40-4.45 pm
V.H.

(Mr. Shibley)

that the provincial guarantee was not included. And you have
in addition the September 15 draft ^{to} keep as evidence.

Mr. Renwick: Right.

Mr. Shibley: That's the evidence on that score.

October 24, Mr. Houser drafted the report and Mr. McCallum
met with Mr. Candy re an financial man. On October 25,
Mr. Steadman sent certain changes in the

1

H-2134 follows

Sept. 5/73
4:45 - 4:50 pm
JLP

(Mr. Shibley)

~~On October 25, Mr. sent certain changes in the agree-~~
ment to Mr. Houser for comment. On October 27, Mr. Candy had a
meeting at Mr. McCallum's office, and Mr. Moog was at that
meeting. On October 30, there's a letter from Mr. Moog to Mr.
Candy: "construction agreement executed"; there's a note in
Candy's diary saying that the Chairman ^(Signed) ~~signed~~ the agreement today.
That's October 30. October 31 is Mr. McCallum's docket - I'm
sorry 30th - McCallum's docket "Hydro commission meeting" but
he says he believes that that must be the meeting of November 1.

On November 1 - it's very indefinite here because
we were squeezing back the time of Mr. Cronyn's meeting with the
Premier; the only day that was left was the first of May and
that was the meeting of November, 1972, when he said that he
thought that Hydro had done a sloppy job.

There was a Commission meeting that day re negotiation
with Canada Square. I'm sorry, ~~that~~ negotiations with Canada
Square completed ^{and} ~~and~~ the Commission approved of the contract.
There's certain exhibits of that date, memos to the Commission
and so on. I have a note the PREMIER left for San Francisco
that day.

On the 3rd, Candy met with Hanscomb ~~and~~ Roy - this
is November - on the 6th, there was a General Manager's meeting
re the new head office building; Nastich was stressing the
importance of ~~in~~ reviewing the agreement in its entirety at that
meeting; that's Exhibit 102.

Memo from Mr. Lamb to MR. Candy containing comments on
parts of the agreement - also November 6, Exhibit 103.

The newspaper article in the Globe and Mail "Economics
of Hydro", Exhibit 109.

And then there is now Mr. Houser calling Mr. Millman
of November 6th, also on that day. I have left out some of the
entries of recent vintage because in the Ames' file we have found
that on October 30th was the first note of "no provincial guarantee"
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Sept. 5/73
4:45 - 4:50 pm
JLP

(Mr. Shibley)

And on October 31st, in Ames' file, there ~~was~~ ^{were} indications that Mr. Moog was trying to interest a western consortium of companies. I think using Equitable as a vehicle to get a western consortium of companies to do the financing; he having said that as of October 4, they were from that day forward dealing with the Prudential. I'm sorry I've left that out because we haven't yet entered it in this chronology.

Then on November 7 there's the entry in Mr. Fleck's Day-Timer of Ellis-Don, Hydro and JBC, Mr. Cronyn's initials.

Mr. Renwick: And prior to that, and we have never yet established the date on which Mr. Cronyn, in fact, met with Mr. Fleck.

Mr. Shibley: That is right. Mr. Fleck's evidence was that as of November 7 he combined the information of what Fleck told him about the ~~Edin~~ ^{RE-D)} complaints plus the information of the press investigation.

The rumour already extant re the press investigation as of the 7th, Candy says he started work on the November 15 memo that day, on November 7. There was a request from the Premier's office on the 7th for a meeting.

Mr. Renwick: Sorry, I wanted Mr. McCallum to hear this because I wanted to ask him some questions about it.

Mr. McCallum: Sorry, Sir. I didn't realize that - I'd be glad to listen.

MR. Shibley: Again on the - do you want me to go back?

Mr. Renwick: No.

Mr. Shibley: On the 7th, there was the ~~request~~ ^{(request}, also from the Premier's office, for the meeting with Mr. Bathercole on the 9th; on the 8th, the date city council approved the plans, on the 8th Ames wrote to Moog confirming the financing subject to their finance committee approving; on the 8th there was a commission meeting, as per Exhibits 105 and 106 and Mr. Nastich again raising concern as to ^{and} the need for material ~~from various~~.

Sept. 5/73
4:50-4:55pm
C.B.

(Mr. Shibley)

from various departments on the eighth. I've already mentioned that Ames gave the commitment subject to final approval on the eighth. The Premier returned from San Francisco on the eighth.

From Hydro's files it appears that work on the November 15 memo first began on November 8th. On the 9th Gathercole met with the Premier and with Fleck re Task Force Hydro. That was at the request of the Premier's office that ^{that} meeting took place. ^{Day-timer,} That's also the date of an entry in Fleck's ~~diary~~ letter from GG⁷⁷ which he interprets as meaning ~~that~~ he was going to request a narrative. Fleck says he may have requested the narrative at the meeting of the 9th, ~~at~~ at the time of the meeting of the 9th, before or after.

I might say that the Premier's evidence as to the 9th was that he gave evidence as to the measure of concern at that time.

On the 10th Candy met with Hanscomb Roy. On the 13th a draft memo was prepared by Mr. Lamb at the ^Erequest of Mr. Nastich. There is no similarity ^{between} ~~to that with~~ ~~the~~ and the November 15th memo. There is a memo to Gathercole re ~~the~~ well that has to do with the city, ^{There's a} ~~to~~ press conference at the Parliament Buildings regarding the release of Task Force Hydro report on November 13. On ~~November 13~~ November 14, Mr. Gathercole met with the Premier. I'm sorry, on November 13, we ~~has~~ also have ~~that's~~ that's the same day as the press release, regarding Task Force, ~~we had~~ the telephone call from Houser to Millman, ^{of London Life,} On November 14, Gathercole met the Premier at 11:30 regarding Task Force Hydro.

On the 15th there was a Commission meeting and it is the date of the November 15 memo which is exhibit 12. I might

Sept. 5/73
4:50-4:55pm
C.B.

(Mr. Shibley)

mention now, it might ~~save~~ save dealing with another witness, exhibit 119, is a memo from Mr. Lamb to Mr. Nastich, wherein he says, "the document prepared for the Provincial Government on 15 November, 1972." That's part of exhibit 119, as to that 15 of November document.

On the 15th Mr. Toth came to see Candy and asked for a narrative to be prepared for Mr. Auld, and on the 15th the Bank of Montreal confirmed that \$2 million was set aside.

On the 16th Mr. Gathercole sent a letter to the Premier with a copy to Fleck of the narrative. On the 16th Candy sent a memo to Mr. Gathercole attached ^{King} exhibit 112, that's the March 15th memo, and informing him of his November 20th meeting with Mr. Auld.

On the 17th, ~~Ames~~ Ames and Moog entered into their letter agreement of \$100,000 for advisory services. Some things I have in here that aren't in evidence.

Mr. Renwick: ~~Smith~~ I think the last thing I ~~was~~ ^{am really} interested in was Mr. Manthorpe's best recollection of the date of Mr. Smith's call to him.

Mr. Shibley: ~~Smith~~ I'll get down to that. Candy met Mr. Auld on the 20th. On the 21st the Premier answered ~~no~~ no that's not right; no that's wrong, yes. ON the 21st Mr. Gathercole met with Mr. Dillon, ~~down to that~~. On the 23rd Candy met with Mr. Moog and then ~~here we are~~ here we are. On the 27th, Mr. ~~Manthorpe~~ Manthorpe says ~~she~~ "certainly received a call from Smith during this week", the week of the 17th of November. There ^{are} other irrelevant entries. ~~Smith's name~~

~~it's down~~
~~On that day the Premier was in the office of Mr. Candy~~

H 2135 to follow

Sept. 5/73
4.55 to 5.00 pm
DT

(Mr. Shibley)

I am trying to cut it down. On that day, also, Mr. Moog met with Mr. Candy --

Mr. Renwick: I think that's sufficient for my purpose. Mr. McCallum, I wouldn't ~~ask~~ suggest that you keep recalling precisely the ~~the~~ evidence about each of those meetings. All I wanted ~~the~~ Mr. Shibley to do is to indicate that there was a period of intense activity during that time by various people and it was also at that time that your partner, Mr. Houser, was in communication with ~~the~~ London Life, and I would like to ask, ~~what~~ apart from the rate question which seemed a little premature having regard to the relatively recent origin of the cost, whether or not you had any sensation or Mr. Houser conveyed to you any sensation of surprise or concern that London Life weren't more interested in such a good and secure investment?

Mr. McCallum: I may have given you the wrong idea then. I think that London Life were interested in a good and secure investment. The thing that caused us to be a little nonplussed was the coolness with which the suggestion was received by Canada Square forces that here was Canadian money that was available and they had been saying, "We haven't got our financing and that's that," and yet they weren't at all interested or didn't appear at all interested on either occasion, as I have it, to the suggestion that money was available and we ^{just} couldn't read that.

Mr. Renwick: Did you take it that there was any coolness on the part of London Life's part about it?

Mr. McCallum: No, sir, on the contrary I think that a fairer picture would be that they were expressing a more of a willingness. You see, when it first came up and I think just from memory that they were talking in terms of eight and three-quarters -- as I recall, Mr. Houser coming to me sometime later on, I guess it would be the next week, and saying that they had called him, I think, and said ~~that~~ "Maybe we would go a little better than that. We would go at eight and five-eighths."

Mr. Renwick: That's ~~the~~ November 13th?

Mr. McCallum: That's right and so I read that as being some interest on their part in making these moneys available, not coolness.

Sept. 5/73
4.55 to 5.00 pm
DT

Mr. Renwick: You don't know of any other activity or

initiative taken by London Life after this approach by Mr. Houser?

Mr. McCallum: No, I definitely don't.

Mr. R. G. Hodgson: Do you understand the coolness

of Mr. Moog now, in the light of his evidence earlier that he didn't like middlemen?

Mr. McCallum: I don't want to comment on that.

I have got lots of ideas but that's not going to help you people.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Mr. McCallum, I am going to try to shorten your testimony and that of Mr. Steadman in this way. The balance of the documents in the brief that I compiled as what I call "the McCallum exhibit" are a bunch of docket entries intended to assist in establishing a chronology of execution and delivery of the documents as between Canada Square and Hydro. I am not going to take you through them now because it will take time and I was going to ask Mr. Steadman about them as well, and during the recess, I took the opportunity to discuss it with other counsel and I think the most expeditious method of dealing with that is, with the benefit of your dockets and those of Mr. Houser and the benefit of the dockets of Mr. Steadman and your collective recollections, I would suggest that a ~~new~~ written chronology be prepared and I will receive it and table it as an exhibit without having to go through it all with you and with him.

Mr. McCallum: All -right.

Mr. Shibley: Accepting it at its face value as being your recollection of when those documents were signed, sealed and delivered. Now, we are interested in not only execution but delivery. I know that there were pages amended and substituted in documents. I think this is clear from some of the exchange. I am not suggesting anything improper in that. I will just caution you that what I want is a chronology as to when a document in its final --

(MH-2137 to follow)



(Shibley)

~~Intention that I want to a chronology and to have a~~
~~document in the final~~ and ultimate form was signed and delivered.

Mr. McCallum: Sure.

Mr. Shibley: And as I say, I think we can forget about the balance of the documents in your exhibit book. If I can leave it with you and Mr. Steadman on that footing.

Mr. McCallum: Yes sir, I will do that. I will try and get Mr. Houser to help because I think he'll be more help to Mr. Steadman than I will be.

Mr. Renwick: Mr. Shibley,...

Mr. Shibley: There are some general questions ~~posed~~ I'm sorry.

Mr. Renwick: Just on that, a question, to the extent that there is any variation between the formal dates borne by the documents the date of execution and their effective dates so far as the parties are concerned, could we have that as well?

Mr. McCallum: Well I understand what it is, and I guess the best way we can get at it is for Don Steadman and ~~Elmore~~ Elmore Houser and I to get together to see what we can do.

Mr. Shibley: Mr. McCallum, these again are somewhat just disjointed. They are sort of cleanup questions I want to deal with.

You have sat through the evidence as to the developments during the period of November and December, and in fact you have now had the benefit of something of a resumé of what I might have in mind.

I want to have your evidence as to any knowledge or information received by you, in whatever manner whatsoever, as to the circumstances of the concern, if any, within Hydro - let's start with Hydro - during the months of November and December, as to the manner in which they had let this contract.

Mr. McCallum: I was never aware of any concern by anyone in Hydro in that period of time about the matter you mention. I was never aware of that.

Mr. Shibley: Nor ~~anyway~~ are you aware of any information as to the concern within government, if any?

Mr. McCallum: No, I am not.

H-2137-2

Mr. Shibley: And in the period subsequent thereto, and right up to the time of this hearing, did you obtain any information in that respect?

Mr. McCallum: No, I wasn't privy to any of their discussions at all.

Mr. Shibley: All right.

Did you ever have any inquiries from representatives of the press as to the mode of letting of this contract by Hydro to Canada Square?

Mr. McCallum: No, I never did.

Mr. Shibley: Did you ever have any ~~discussions~~ discussions with Mr. Fleck in that regard?

Mr. McCallum: Yes, since this inquiry has been on I have talked to ~~Mr.~~ Fleck, both before and after he gave evidence about this sort of thing. I don't think I ever met him until the inquiry had started.

Mr. Shibley: That's the point. It was not until after the inquiry got under way.

Mr. McCallum: No.

Mr. Shibley: And did you ever have any discussions with any other representative of government pending the inquiry?

Mr. McCallum: No, sir.

Mr. Shibley: Did you discuss the issues before this committee prior to the convening of the committee with anyone within Hydro?

Mr. Genest: I'm sorry, are you, I did I think ~~waive~~ several months ago when this inquiry started, make it clear, Mr. Shibley, that the commission was waiving all privilege,

Mr. Shibley: I realize.

Mr. Genest: [^]In connection with the negotiation and conclusion of this transaction.

Mr. Shibley: Yes.

Mr. Genest: But I certainly can't waive any privilege with respect to my conversations or counsel's conversations in preparation for this very inquiry.

H-2137-3

Mr. Shibley: I agree with that. That is why I phrased my question "prior to the convening of this committee, did you have any conversations with anyone within Hydro as to problems emanating from the mode of letting of the contract"?.

Mr. McCallum: No.

Mr. Shibley: So that it was never the subject of communication between you and say, Mr. Gathercole or Mr. Candy or Mr. Sissons?

Mr. McCallum: No, I had no way of anticipating it, and I guess

Mr. Shibley: All right. Did you have any conversations, or any form of communication with anyone within Canada Square pending the

Mr. McCallum: Before this thing blew up?

Mr. Shibley: Yes.

Mr. McCallum: No.

~~Mr. Shibley: Now in that letter you said there was no~~

H-2138-1 follows

Sep. 5/73
5.05-5.10 pm
V.H.

Mr. Shibley: Now in that latter respect, there is no privilege in any event, Have you had any conversations with him even to date?

Mr. McCallum: Who? With Canada Square?

Mr. Shibley: Yes.

Mr. McCallum: Yes. Sit and talk to them every day.

I don't think I have ever missed a day that I haven't been talking to them.

Mr. Shibley: Well, I would just like to ask you. as you say, You have sat here, almost every day. Have you anything to add to what they have said in terms of information from that source?

Mr. McCallum: Oh, what I could add, eh?

~~Mr. Shibley~~ Now, you guys, what's it worth to you?

Oh, I couldn't begin. I can't add anything if you mean in the sense of helping you in this inquiry, no. I think that you have brought out a lot more than I ever heard of. ~~and~~ Certainly they've been treating me, and it's a good thing that Jim Bradshaw ^{is} here to listen to it, they've been treating me like a leper and the reason is, I am sure everybody else is being treated the same way, ~~this~~ this business of confidentiality, I go to say to them, "Can I find out so-and-so?" and he acts as if he didn't know me. They were so frightened of speaking to me, Jim in particular, because of this confidentiality, because ^{then it} ~~we~~ would publish it, ~~then~~ obviously, and bingo, it would be admissible over here. So I haven't had all that many friendly discussions with him. Maybe now

Mr. Shibley: Now, Mr. McCallum, I am not interested in going through it chapter and verse, I want to know whether you have information as to anything of an exceptional nature that hasn't been touched upon by this committee to this point of time. Are we missing anything?

Mr. McCallum ^{General} Why am I getting a subpoena?

Sep. 5/73
5.05-5.10 pm
V.H.

Mr. Chairman: You don't want to sit for four months and draw a blank?

Mr. McCallum: No, I am not about to help you, I'm afraid.

Mr. W. Newman: Mr. Chairman, are we dealing with ...

Mr. McCallum: ~~They haven't~~ ^{Yes} confided in me and I know of nothing that would be of interest to you other than what you have brought out yourself.

Mr. Shibley: Thank you.

Mr. W. Newman: Mr. ^{the time} Chairman, this line of questioning is up to and including ~~this~~ this inquiry started, not since the inquiry started.

Mr. Chairman: Oh no, ^{this is} since the inquiry started.

Mr. Shibley: Well, I distinguish between Hydro and Canada Square. With respect to Hydro, I take the view ~~that~~ ^{with} Mr. Genest. ^I Concur that whether or not there is a privilege we should avoid violating what is normally a ~~a~~ solicitor-client privilege. With Canada Square, ~~it's~~ ^{is} right ^{up} to date, ~~I~~ ^{has} I am talking about.

Mr. Genest: I don't agree that that's not covered by privilege but I don't think we are getting anywhere ~~on it~~ ^{anyway}.

Mr. Shibley: Mr. McCallum isn't acting for Canada Square.

Mr. Genest: No. No. But ~~the~~ information I ~~have~~ ^{gain in ...}

Mr. Shibley: Not you, I am talking about him.

Mr. Genest: ~~and~~ But he's my junior counsel. He's a witness....

Interjections by members.

Mr. Genest: And I have never had a more distinguished one.

Mr. McCallum: I'll tell you who is going to step on whose feet tonight.

Mr. Shibley: And to think that Mr. Genest and I are co-counsel on another case?

Mr. Genest: I am your junior on that one.

Mr. Shibley: Oh, no.

Now I have to ask you whether you have any information that might shed light on the May 14 letter from Mr. Gathercole to the Premier referable to the involvement of the Ministry of ~~Public~~ ^{Government} Services and the notations on that letter?

Mr. McCallum: No sir.

Mr. Shibley: All right. Have you any knowledge or information that there was any political patronage associated with Canada Square receiving the contract, and now I am talking about any knowledge or information extraneous to anything that was a matter of evidence ~~before~~ before this committee?

Mr. McCallum: No sir.

Mr. Shibley: Have you any knowledge or information as to the person or persons who telephoned Mr. Smith, Don Smith, of Ellis-Don, which might have led him to report to Mr. Manthorpe and to Mr. McAuliffe in the terms that he did report?

Mr. McCallum: No sir.

Mr. Shibley: What is the explanation ~~of~~ ^{for} requiring the option to purchase Mr. Moog's shares in Canada Square?

Mr. McCallum: I believe that originated with Hydro, ~~I am not just sure but the idea was that~~

H-2139-1

(Mr. McCallum)

I'm not just sure, but the idea behind it was that he had, throughout the piece, put himself forward as a person who was going to see to it that there was a very good relationship, as he often said, with Mr. Candy and the people in Hydro and was going to, and often used to say, "I absolutely promise that everything will turn out right and we will do this thing properly". ~~and~~ I guess ~~somewhere~~ somewhere along the line one of us decided, 'well, we will just see to it that you are here to do it, too,' and I don't think there was anything more than that.

Mr. Shibley: Well, now, I previously referred to the fact that your ~~own~~ dockets seemed to run out on October 30th. Was there any reason for your having nothing more to do with this file as at November 1, 1972, than the fact that all that was left was to have Mr. Houser document it?

Mr. McCallum: No, there really wasn't. That is all there was left to do. Our job had been done; the documents had been executed.

Mr. Shibley: Nothing else was happening that caused you to divorce yourself from the file?

Mr. McCallum: Not at all, no.

Mr. Shibley: Now, I did finally ask for the ~~minutes~~ minutes of Hydro to be checked as to references regarding the need for a consent to sue Hydro, and, Mr. Genest, I don't know how far you ^{have} got in that?

Mr. Genest: Mr. Shibley, we are being thorough. We are going ~~at~~ right back to a ~~year~~ year earlier.

Mr. Shibley: Even if it relates to a ~~coal~~ ^{coal} contract or anything else, I am interested to know when, and if, Mr. Gathercole took up the question of difficulties ensuing ~~from~~ ^{from} this provision in the ~~Act~~ Act.

Mr. Genest: That search is in progress, sir, and it should be available I would hope, tomorrow.

Sept. 5/73
5.10-5.15p.m.
B.A.

Mr. Shibley: All right, thank you. I have no further questions of Mr. McCallum, Mr. Chairman.

Mr. Chairman: Mr. McCallum, just out of curiosity on my part, am I correct when I am under the impression that you did a ~~great~~ great deal of negotiating directly with Mr. Moog?

Mr. McCallum: I wouldn't - well, I guess, what is a great deal? Yes, I did a great deal, I would think, of negotiating directly with Mr. Moog. That doesn't mean to say we were not in the presence of others because we were.

Mr. Chairman: Without his counsel being present?

Mr. McCallum: Only twice or three times, I think, yes.

Mr. Chairman: Isn't that a little unusual? I just wondered how that came about.

Mr. McCallum: Well, it wasn't hard to explain. The only times that I spoke ^(to him) and there wasn't any counsel present ~~was~~ ^{were} at his own office. You will notice, if you will, looking at the memoranda, that I came into his office, I think, once, if not twice, on my way to work in the morning. His office is above the subway station. And ~~at~~ another time I came to his office was on my way home, again it was at night, 6.30 or something. And there was no coincidence about it at all. In the beginning I don't think he had his lawyers in when we were talking about the zoning, ~~and~~ ^{as} you can see from the memos you have in front of you, subsequently the same conversation took place between myself and Jim Bradshaw on this question of zoning, as had taken place up at his place.

Mr. Chairman: Any other questions?

Mr. Gaunt: Yes, Mr. Chairman. Early on in the documentation I recall, I think, one memorandum, I am not sure to whom it was addressed but I rather think it was written by Mr. Candy, in which he pointed out that one of the possibilities open to the builder was a capital cost allowance. Now, in reading your documents, in your file, Mr. McCallum, I don't see reference to that, and really, what I am wondering is, was there any mention of that particular point in the negotiations because, if applicable, it would amount to

H-2139-3

Sept. 5/73
5.10-5.15p.m.
B.A.

(Mr. Gaunt)

a considerable sum of money. For instance, on a ^(\$45 million) building
if you took five per cent capital cost

(Tape H-2140 follows)

Sept. 5/73
5:15 - 5:20 pm
JLP

(Mr. Gaunt)

~~\$4 million building, if you took 5 per cent capital cost allow-~~
ance, the first year it would amount to some \$2.5 million, and thereafter reducing each year, of course.

~~But~~ I'm just wondering if, at any point, that was used in your negotiations as a lever on your side of the table, so to speak?

Mr. McCallum: It came up, and I think I pointed out to the committee, the occasion ^(that) I remember it coming up, it had to do with the business of whether, on the expiration of the lease, the building became ^(automatically) ~~ours~~ ours. I recall saying to you that the other side had asked that, in addition to that, we put another clause in which said that we ~~would~~ could then exercise an option to buy for \$1.

That was put in because Mr. Bradshaw made it clear to us that he wanted to be able to have the tax advantage that you describe. I never then, and don't now, agree with Mr. Bradshaw's law; I don't suppose it really matters to you to find that two lawyers have different opinions as to the law.

Mr. Shibley: Well, Mr. McCallum, I wonder whether that evidence really is necessary. I think the question was whether you ever used it as a negotiating position?

Mr. McCallum: No, I didn't use it as a negotiating position directly. I was very conscious of the benefits that could be conferred on them, just as much as I expected to get benefits for Hydro arising out of it. But it was not the sort of negotiating that you would have where you were sitting down to accomplish a sale and lease-back, where you were going ~~to~~ each man ^{to} try and make a deal over a contrived or arrived about sale price and ~~for~~ ^{therefor} contrived or arrived about lease payments. That wasn't the situation that here applied.

Here a deal had in a very real sense been offered, and we weren't going to try then, and didn't try then, to remake the

(Mr. McCallum)

deal in the sense of saying "You haven't used up all your capital cost allowance, or you're going to save this, and we want you to do thus, and so on".

Mr. Shibley: I think there is a concern that we don't go too far with this witness in this area; there may be other witnesses who are better qualified to testify on this. But I think really all you are being asked about at the moment, Mr. McCallum, is whether it was used as a negotiating point.

Mr. McCallum: It may, ^{indeed, be} ~~be a snare~~, and I'm very conscious of Mr. Anson-Cartwright, Mr. Shibley, and the reason I'm →

MR. Shibley: Well, Mr. Coles also.

Mr. McCallum: Who?

Mr. Shibley: Mr. Coles.

Mr. McCallum: Coles, sure. The reason I'm laying some background for this is that we have, Hydro have, our own views as to what the law is as it applies to that, ^{at Pams} and I was ~~pleased to~~ point out to you that I not only didn't bargain that ^{particular} ~~particular~~ thing but I don't even now hold the view that it's a valid tool for us to use under the circumstances of this deal. I don't think Canada Square or anybody else particularly want an exposition now of what we say the legal position is. But I don't think it's available to them.

Mr. Shibley: No.

Mr. McCallum: I didn't think then and I don't think now and I've made it clear to you in the conversation I had. And ~~xx~~ I have lots of reasons for saying it.

Mr. Bullbrook: I just want - I don't understand that fully. Perhaps you covered it this afternoon in my absence, and if you have I don't want an ^{do} explanation, I can get it when we're writing the report. But ~~I~~ I understand from your response that Capital cost allowance is not available to Canada Square?

Mr. McCallum: That is my view.

Mr. Shibley: But it's not their view.

Mr. Chairman: Let's ←

Mr. Shibley: That's the problem. I was hoping Mr. McCallum would not go on record in that way.

Mr. Bullbrook: Well, the reason I'm interested in it, frankly, is this . Aside from the legalities of it, is the fact that, if you recall Mr. McCallum's evidence this ~~morning~~ morning, ~~he~~ he completely rebuffed, unequivocally, the suggestion that Hydro be a party to the bringing about of a Crown corporation which would assist in the avoidance of withholding tax.

~~And the reason he said he did that - and correct me if I'm wrong, Sir - is that you felt it was somewhat reprehensible for Hydro as a public body to be involved~~

(Tape H-2141 follows)

Sept. 5/73
5.20 to 5.25 pm
DT

(Mr. Bullbrook)

the reason he said he did that, and correct me if I am wrong, sir, is that you felt it was somewhat reprehensible for Hydro, as a public body, to be involved in the negating of a normal obligation to pay tax. Well, of course, this becomes very fundamental. I don't know whether it becomes fundamental to our deliberations, Mr. Chairman, but I know in the back of my mind from the very beginning of this whole adventure, has been the propriety of Hydro entering into a deal which would benefit them because of the reduction of rental cost if Canada Square is entitled to capital cost allowance, because then Hydro becomes a party to the very reprehensible thing that Mr. McCallum felt was somewhat ~~reprehensible~~ this morning.

Mr. McCallum: No, no, no, Mr. Bullbrook.

Mr. Bullbrook: Now, wait --

Mr. McCallum: That is just not so at all.

Mr. Bullbrook: Help me then. If Hydro built this building on its own, there would at no time be any use of any capital cost allowance.

Mr. McCallum: I don't know how they do their accounting but they don't have obviously a profit, and so I guess they don't have to worry about --

Mr. Chairman: I don't think Hydro pays any income tax.

Mr. Bullbrook: Am I misdirected there?

Mr. McCallum: I think you are.

Mr. Shibley: I think there is quite a distinction, Mr. Bullbrook. It is considered quite appropriate in leasing ~~and~~ transactions for one party to have the benefit of capital cost allowances. I think the department, on many such transactions, treats the lessor as owner for purposes of tax write-off. There is nothing inappropriate or improper, and I believe I understand that in this transaction Canada Square intends to claim such capital cost allowances, which was ~~why~~ why I was a little concerned not to have Mr. McCallum express his views on the matter because that's an issue inter se Canada Square and the Department of National Revenue. I don't think there is anything inappropriate in respect of transactions of that kind. There are literally thousands of such transactions approved by ruling by the department all the time.

Sept. 5/73
5.00 to 5.25 pm
DT

Mr. Bullbrook: No, no, no, you misunderstood. I am not directing my comments to the question of the propriety of the capital cost allowance under the law.

Mr. Shibley: ~~This is a~~ different type of thing ~~than what we were~~ talking about...

Mr. Bullbrook: Mr. Shibley.

Mr. Shibley: Yes, I am sorry.

Mr. Bullbrook: I am not directing my comments as to the propriety of the claiming of ~~the~~ ^a capital cost allowance under the law. I mean, that's something that ~~will~~ ^{would} be decided by the appropriate officials. The point I am making is, Hydro ~~is~~ as a public body and entering into ~~this~~ this type of scheme, if there is a capital cost allowance used, then certainly they are doing the very thing that I think that you regard as reprehensible because they are becoming part of an instrument where there are tax benefits.

Mr. McCallum: No, no.

Mr. Shibley: I think it is rather the other way around. What Hydro was doing and was entitled to do as reflected in its earlier memoranda -- you will remember some of the ~~memoranda~~ memoranda said that because the developer will have the benefit of capital cost allowances, this is a factor that we should employ in the negotiation of a better deal for Hydro and this is a negotiating posture that's adopted regularly by lessees. Now, with respect to the scheme that Mr. McCallum was talking about for the Crown corporation, that was a differen^t thing altogether because he viewed the interjection of a Crown corporation just for the purpose of avoiding withholding tax as reprehensible. This is not a transaction created in form or in substance just for the purpose of avoiding tax or claiming capital cost allowances.

Mr. Bullbrook: I didn't say that and I don't intend to continue this on, but I want you to know, Mr. Chairman, that I disagree with our counsel's attitude in this respect and I will be persuaded that I'm wrong. But I am ~~not talking of~~ ^{I am} talking about the general philosophy of a public body ~~not~~ ultimately expending public funds that gains a benefit as a result of a tax write-off. That's what I am suggesting. If Hydro built that building - right? -

Sept. 5/73
5.20 to 5.25 pm
DT

(Mr. Bullbrook)

nowhere along the line would the public purse be affected. They would spend the money. ~~They~~ They would spend the money. Hydro is now spending the money, and as a result of the use of the lease-purchase vehicle, the public at large is contributing to the benefit on Hydro, that's what I am saying, if there is a capital cost allowance.

I won't carry that any further but it's something that I would want to discuss on the ~~writing of the report~~

~~Mr. Genest: Every time we rent a building, we~~

~~contribute to the depletion of the public purse.~~

~~Mr. Bullbrook: All right, that's fine. That's~~

~~exactly fine.~~

(H-2142 to follow)

Sept. 5/73

5:25 - 5:30 pm

C.B.

(Mr. Bullbrook)

writing of the report.

Mr. Genest:

~~Mr. Bullbrook:~~ Everytime we rent a building we contribute to the depletion of the public purse.

Mr. Bullbrook: All right, that's fine, that's exactly fine and I want you to recognize Mr. ~~Genest~~ GEnest, and as council for Hydro, that I might well be taking the position that you shouldn't be doing that.

~~Mr. Bullbrook: I have some products~~

~~cover operations and you want to see them~~

Mr. Chairman: Mr. McCallum, I think we are presently through with you and thank you very, very much. I hope tonight's rest will be much more comfortable than last night's. Thank you for your assistance again. You helped us, as many people have, under difficulty situations. As a lawyer I appreciate the difficult situation under which you gave your evidence in the last two days and I'm ~~much~~ grateful for the help you gave us.

Gentlemen, it is important that we complete Mr.

Steadman today. I hope that it will be over by six, but it may be a few minutes afterwards.

Mr. Renwick: Mr. Chairman I'm going to have to leave

but I just wanted you and the rest of the committees to know that I have blocked off the 19th, 20th, 21st and 22nd, for the writing of the report. I want to be present when the report is written. I've had to do this because I have to fill ⁱⁿ the 17th and the 18th with other matters and I've got to reserve the week of the 24th for other matters, and I wanted you to know ^{that} in my planning, as I'm sure others want to plan, is that that we're meeting that kind of a timetable, otherwise I'm going to be missing some of the sessions when the report is drafted, which would ~~lead~~ ^{lead me} of

Sept. 5/73

5:25 - 5:30 pm

C.B.

(Mr. Renwick)

course to write my own report of the affair.

Mr. W. Newman: Maybe you and I will write one together.!

Mr. Renwick: Can I have some sensation that we are -
I interject now because I'm going to ~~the~~ have to leave today.

Mr. Chairman: That is still my hope Mr. Renwick. Mind you, I'm trying to ~~the~~ push not only Mr. Shibley, but push all members. I notice that ~~the~~

Mr. Shibley: I want to go on record, Mr. Chairman, I asked for an evening meeting this evening and there is very good reason for certain members who can't be here. I asked for a session this Friday and there is also very good reason why we cannot have a session this Friday. I'm trying ~~the~~ very hard to telescope a lot of evidence within the limited period in question. I haven't thrown up my hands but when we use up periods of time as we have even within the last couple of days on discussion I don't think is directly on ^{the} point, or highly material, that cuts into a very tight timetable I've laid down for myself.

For tomorrow I'm intending to call Mr. ~~the~~ Zwigg, Mr. Johnson and Mr. Bellamy of Ames and Mr. Rasmussen of Hanscomb Roy. I understand we should rise fairly promptly at around five tomorrow because of commitments of certain members.

I had intended to try and get Mr. Gordon in tomorrow as well, although he is away on ~~the~~ very responsible business for four days. As for next week I'd asked the committee members to set aside Friday of next week, so that we might have five full days of hearings should it become necessary.

Mr. W. Newman: Nights too?

Mr. Shibley: Even ~~the~~ the evenings as well, on any given day I might just say let's sit tonight.

Mr. Renwick: Well, I ~~the~~

Sept. 5/73

5:25 - 5:30 pm

C.B.

~~Mr. Renwick: I've held next week on the basis of~~

Monday night, Tuesday night and Thursday night if necessary and I will be available on Friday. But I am convinced that we have got to count down the evidence and be completed a week from this Friday at the very latest.

Mr. Shibley: I'm trying very hard to ^{do} that, Mr. Renwick.

As I say you can tell from what's happening that I ~~mean~~

Mr. Chairman: Well, gentlemen, we are all working toward that and as far as keeping to the 19th, fine, our best way to meet that is to get on now.

Mr. W. Newman: Mr. Chairman, just one quick thing.

I assume we are to set aside every ~~we~~ evening next week ^{if} possible for sitting?

Mr. Chairman: Well let's do our best. WE may not all be able to make them, ~~but we will~~

Mr. Genest: Mr. Chairman, ~~there is~~ one thing that concerns me very much at this stage that I've expressed before to Mr. Shibley, is we are getting into the closing down of the ~~the~~ inquiry and that is the evidence of Mr. Anson-Cartright.

H 2143 to follow



H-2143-1

(Mr. Genest)

~~closing down of the inquiry, and that is the evidence of Mr. Anson-Cartwright.~~ It may be necessary for Hydro to ask leave to introduce evidence in contradiction of that. I don't know what Mr. Anson-Cartwright is going to say. ~~And~~ It would be extremely helpful if we could get, if I could arrange with Mr. Shibley, for some advance notice of the gist of that evidence, because it may save a lot of time, ~~and~~ It may save ~~f~~ us what I see as not a probability, but a real possibility that there may be disagreement which would cause me, in my duty to my client, so that the committee will hear both sides of an opinion, to hear some other evidence on it. And this may extend you into other periods. So if I could, I know Mr. Shibley has been so busy lining up his evidence for the next day that I don't think he has had a chance yet to put his mind to that.

Mr. Shibley: I haven't.

Mr. Genest: But it is something that is concerning me very much.

Mr. Walker: Perhaps Mr. Anson-Cartwright's evidence could be provided by way of brief. It would be a far easier way for us to digest it.

Mr. Shibley: I have already instructed him to do that. I don't have it yet.

Mr. Walker: It may not be necessary for him ~~say~~

Mr. Shibley: He will have to give evidence.

Mr. Walker: Oh, that is questionable.

Mr. Chairman: At any rate, you are prepared to cooperate with Mr. Genest?

Mr. Shibley: Yes. I must tell you, there are a large number of witnesses yet to be dealt with as you well know, and we haven't dealt with any of the financial people yet, including Mr. Coles for Canada Square. I am eliminating a number of people from my ~~witnesses~~ ^{last as} I have indicated to some of you. But I have to say this that I am going to try, but we lost a couple of working days last week, and I can't promise to meet that deadline. I'll try.

H-2143-2

Mr. Chairman: Well, gentlemen, let's proceed now. ~~Mrx~~

DONALD JOHN STEADMAN, sworn.

Mr. Shibley: Mr. Steadman, I am not going to ask you as I had intended about the chronology of the execution and delivery of documents. You heard what I had to say to Mr. McCallum, and I am relying upon you and Mr. Bradshaw for Canada Square to collaborate with him instead of reviewing a lot of ~~and~~ dockets in their file and your recollections, to establish that chronology.

What I am anxious to ask you about is this, however: You heard me examine Mr. McCallum with respect to the period October 23, 1972, and following, and you heard me outline the chronology of attendances at the request of Mr. Renwick, within that period of time, ~~and~~ I am anxious to have from you, your evidence as to the impact, so to speak, on Canada Square, of the notification that the guarantee of the province of Ontario was not to be provided as previously included in the documents.

Mr. Steadman: Any information I have in that connection would be privileged, Mr. Shibley. Matters that were discussed with Mr. Moog, ~~that~~ Mr. Coles and Mr. Bradshaw in private meetings.

Mr. Shibley: Well, did you not attend some of the meetings with Hydro that were referenced in the dockets ~~that~~ of Mr. McCallum?

Let me take you to this, In the documents produced by A.E. Ames, there is an indication that other sources of financing were sought as of October 31. Can you tell me whether that was the result of the fact that it was then known to Canada Square that the provincial guarantee would not be provided?

Mr. Steadman: I spoke to Mr. Johnson on October 30.

Mr. Shibley: Yes.

Mr. Steadman: And again on October 31.

Mr. Shibley: Yes.

Mr. Steadman: At that time, the only source of financing was the same source of financing that has been previously discussed.

Mr. Shibley: Did you discuss with him the fact ~~that~~;

Sept. 27/73
5:30 - 5:35 pm
CA

H-2143-3

Mr. Steadman: I'm sorry, previously discussed with my clients and not with Mr. Johnson. Those were the first two calls that I had with him.

Mr. Shibley: He has got a memorandum of October 30 - I gather that is the conversation you are talking about? And within that it says "No guarantee by the province". Did you discuss that with him?

Mr. Steadman: I may well have mentioned that.

Mr. Shibley: What was the gist of that conversation?

~~Mr. Steadman: He was at that time.~~

H02144-1 follows

Sept. 5/73
5.35-5.40p.m.
B.A.

H-2144-1

~~(Mr. Steadman)~~

~~I may well have mentioned that.~~

~~Mr. Shibley: Yes, and what was the gist of that conversation?~~

Mr. Steadman: He was at that time asking for information so that he could relay it to the lender; information, really, as to the legal background of the transaction. This was before Borden and Elliot got in the piece and Prudential did not have, so far as I know, Canadian counsel, ^{or} had not instructed Canadian counsel at that point. Mr. Johnson wanted from me my analysis of the legal background so that he ~~could~~ ~~be~~ relay it on to Prudential. I went through several sections of the Power Commission Act and the Public Works Act.

Mr. Shibley: Did Mr. Johnson indicate to you in that conversation that the fact that the province was not to give its guarantee might ^{or} affect the willingness of Prudential to go forward with the financing?

Mr. Steadman: I honestly cannot remember the discussion, ^Certainly it had been over a week ^{or} since ~~we~~ we had been told, ~~and~~ I guess ^{at} the meeting of October 23, that Hydro would not be producing, or would not provide us with a provincial guarantee, and it was pretty much old hat at that point.

Mr. Shibley: When did you notify Ames of that, however? Was it at the meeting of October 30th?

Mr. Steadman : I didn't notify Ames at all, sir. I was called by Mr. Johnson.

Mr. Shibley: Well, I just tell you that it is part of their exhibit that on the 30th, they note that there is no guarantee from the province, and I want to know what is your evidence as to the position taken by Ames or the comments by Ames in respect of that information.

Mr. Steadman: Really, my telephone calls with Mr. Johnson on October 30 and 31 were discussing provisions of the Power Commission

Sept. 5/73
5.35-5.40p.m.
B.A.

(Mr. Steadman)

Act and the Public Works Act, as I understood them to apply to this transaction, and giving them legal background. It may well be that we discussed the provisions of the Power Commission Act relating to provincial guarantees and that I explained to them our position on that, but I certainly didn't discuss the deal as to whether it was going to mean an extra quarter ^{of a} per cent or half a per cent, because he didn't have a provincial guarantee.

Mr. Shibley: Well, was Mr. Johnson upset?

Mr. Steadman: He wasn't upset. No.

Mr. Shibley: He wasn't upset. Did he tell you that there would have to be communication of the ^{is} ~~circumstance~~ ^{to} ~~the~~ Prudential?

Mr. Steadman: I can't remember, I am sorry.

Mr. Shibley: Was any step taken in respect of the withdrawal of the guarantee from the documentation?

Mr. Steadman: The only step we took was in the next draft to delete all reference to the province.

Mr. Shibley: I see. There were no communications with the Prudential, then?

Mr. Steadman: I had no communications with the Prudential. Well, my first communications with our solicitors was on November 3, and thereafter, again, discussing with Mr. Brooks of Borden and Elliot the legal background of the transaction as we saw it, and he ~~eventually~~ eventually agreed with me as to what it was.

Mr. Shibley: With respect to the right to sue, did you consider with him the consequences of Hydro being ~~made~~ ^{made} a Crown corporation?

Mr. Steadman: We did, later, we had agreed that ~~this~~ ^{this} is quite obvious from a cursory examination of the Power Commission Act, you require the power of the Attorney General to proceed with an action. This caused him some concern, and later on, and I can't remember the exact date that Task Force Hydro report came out, and we discussed

that and Mr. Brooks told me he relayed the information on to the Prudential.

Mr. Steadman: None whatsoever. I see ~~it~~ in the
Star or the Globe and Mail ~~the~~ ^{day it} came out. ~~I was~~
quite pleased to see it.

Mr. Shibley: ~~OK~~ All right. Now then, you have been

Mr. Steadman^a: Yes, we had at one of the meetings, and it was before October 23, because I am sure Mr. Bradshaw was present, Mr. Houser mentioned London Life and the possibility that they might be able to come up with an answer.

~~M. [illegible]~~

~~M. [illegible]~~

~~M. [illegible]~~

(Tape H-2145 follows)

Sep 5/73
5.40-5.45 pm
V.H.

~~(Mr. Stedman)~~

~~they didn't get to come up with the financing.~~

Mr. Shibley: Can you peg that date more precisely?

Mr. Stedman: I can't, I'm sorry.

Mr. Shibley: Sometime prior to October 23 he first mentioned it? Is that correct?

Mr. Stedman: Yes sir.

Mr. Shibley: Did he mention it to you or to Mr. Moog? Or both?

Mr. Stedman: It was a meeting in Mr. Houser's private office. He was in his easy chair and sort of leaned back and talking to the meeting really.

Mr. Shibley: Who else was present?

Mr. Stedman: If I can refer to some notes?

Mr. Shibley: Surely. Surely.

Mr. Stedman: It might help me.

Mr. Shibley: Yes, surely.

~~Mr. Stedman: I am sorry. I don't see any reference to it in the notes that I have but I should think that it was passed over fairly brief matter. It wasn't part of the~~

~~financing?~~

Mr. Stedman: I am sorry. I don't see any reference to it in the notes that I have but I should think that it was passed over fairly brief matter. It wasn't part of the

Mr. Shibley: What's your best recollection of who was present?

Mr. Stedman: Mr. Bradshaw, Mr. Coles, Mr. Moog, myself, possibly Mr. Candy.

Mr. Shibley: And what was the response to the suggestion by Mr. McCallum that London Life might provide the permanent financing? I am sorry, Mr. Houser.

Mr. Stedman: It was turned down.

Mr. Shibley: What do you mean?

Mr. Stedman: Not a terribly extensive conversation, as I remember.

Sep. 5/73
5.40-5.45 pm
V.H.

Mr. Shibley: Did anybody make comments?

MR. ~~Stedman~~^a: Mr. Moog.

Mr. Shibley: What did he say?

Mr. ~~Stedman~~^a: I can't remember. I am sorry. My impression of it, ~~in~~ my memory is it just didn't really ~~interest~~ interest Mr. Moog.

Mr. Shibley: I see. Well, then, can you give any ~~explanation~~ explanation or assistance to this committee as to why Mr. Houser would have pursued the matter with London Life on November 6 and again on November 13?

Mr. ~~Stedman~~^a: No idea whatsoever, sir.

Mr. Shibley: Was the matter ever discussed again?

Mr. ~~Stedman~~^a: Not to the best of my recollection.

Mr. Shibley: Quite apart from providing funds, do you know of any other purpose for which Mr. Houser might have been in communication with London Life referable to the Hydro Head Office building?

Mr. ~~Stedman~~^a: None whatsoever sir.

Mr. Shibley: Do you have any knowledge or information as to any communication between London Life and any other entity referable to the financing of the building?

Mr. ~~Stedman~~^a: Other than Mr. Houser's mention at that one meeting that he had spoken to ~~someone~~ ^{London Life,} ~~no~~

Mr. Shibley: All right. Now you assumed carriage of the file on the 23rd October, is that not so?

Mr. ~~Stedman~~^a: That is correct.

Mr. Shibley: And from that date forward, Mr. Bradshaw had nothing further to do with the file?

Mr. ~~Stedman~~^a: I wouldn't ~~put~~ put it that strongly, sir.

Mr. Shibley: Well -- you took over?

Mr. ~~Stedman~~^a: I had day-to-day carriage of the file and Mr. Bradshaw was engaged in ~~an~~ other matters.

Mr. Shibley: Right. And was there any reason for your taking over the file on that ~~one~~ occasion?

Sep. 5/73
5.40-5.45 pm
V.H.

Mr. Stedman^a: Well, I had been involved in the negotiations starting in early summer and had worked on the drafting, and Mr. Bradshaw had another important transaction which took him out of the city for an extended period of time and I took over the ~~the~~ clean-up work.

MR. Shibley: That was the only reason?

Mr. Stedman^a: Yes sir.

Mr. Shibley: Were you present on the occasion of the phone call that was made by Mr. Moog to Switzerland on August 7, I think - August 4, I suppose, it is now.

Mr. Stedman^{1a}: ~~I was on holiday~~

H-2146 follows

~~(Mr. Shibley)~~

~~August 2nd I suppose it is now.~~

Mr. Steadman: I was on holiday starting around August 2 or 3, the Friday, and that date can be checked I am sure quite easily. ~~And~~ I had no knowledge of anything that happened until September 21. So after August 2 to September 21 I was completely out of the transaction.

Mr. Shibley: All right.

Mr. Chairman: ^{Do they} All get that long holiday in your firm?

Mr. Thomson: He didn't say he was on holidays throughout that time, Mr. Chairman.

Mr. Steadman: Four miserable weeks in Parry Sound last year! Well, Mr. Bradshaw, as I said earlier, had primary charge of the matter, and he only brought me back into it in late September when there was some drafting to be done, and other work to be done.

Mr. Shibley: You sat here while Mr. McCallum outlined his interpretation of what appraised value means, and ~~you~~ ^I gather you must have been privy to the late October negotiations respecting that clause. Were you?

Mr. Steadman: Yes, Sir.

Mr. Shibley: Because that clause wasn't put in final form until the latter part of October. Is that correct?

Mr. Steadman: At the earliest. Again, when ^{we} ~~you~~ produce our chronological list, I think we'll get the exact date because there's been a lot of tinkering with it.

Mr. Shibley: Thank you. In that connection, do you concur in the explanation given by Mr. McCallum as to what that phrase means, or do you place a different interpretation?

Mr. Thomson: Mr. Chairman, I'm sorry. My name is Thomson; you recall I was here before.

Mr. Walker: Which month was that?

~~are in~~

Mr. Thomson: We ~~understand~~ ^{are in} this difficulty. Mr. Steadman is here as a witness in response to the request of this committee. He is coincidentally still one of the solicitors acting for Canada Square. But he cannot, in that witness box today, be expected to speak for Canada Square. ~~And~~ It is not fair to him, in my submission, and it's not fair to Canada Square, to try to cross-examine him, or indeed to ask him questions about the interpretation of a clause which may or may not become contentious as time goes on. ~~And~~ The only way that ^{that} ~~can~~, in fairness to Canada Square, be dealt with, is to give Canada Square an opportunity through its counsel, who sits over there, to decide what position it might take.

Mr. Steadman can only give his own personal off-hand view, and even to ask him to do that, in my submission, is not really fair to his client.

Mr. Shibley: Mr. ~~Chairman~~ Chairman, my difficulty is this. You see, we're struggling, as Mr. Allan has repeatedly said, for an interpretation of a phrase that was finally settled upon by two lawyers.

Mr. Steadman: There were ~~really~~ more than two lawyers involved.

Mr. Shibley: All right. But the principal lawyers who are involved are Mr. McCallum and Mr. Steadman, acting on instructions of their respective clients. I think that all we're left with now is that the interpretation of the phrase may be the subject of a dispute in litigation, etc. But without benefit of as much as we might get in that respect from the two people responsible for employing the term, within the formal documents, we are going to have a terrible time trying to ~~fi~~ formulate any conclusions.

Mr. Finlayson: Mr. Chairman, I ~~think~~ ^{think} I can shorten this up by saying I don't really care what Mr. Steadman says on the subject. I don't regard it as any more binding on Canada Square than Mr. Shibley's opinions, ~~and I do~~ I don't know what use it is going to be to you, quite frankly, if we do get into ~~this~~

(Mr. Finlayson)

dispute.)

MR. Ganest isn't going to accept what he says. I may or may not; it doesn't make any difference. It's a question of the Court interpreting the document and arriving at a conclusion. But I would emphasize, as Mr. Thomson has, that he's simply speaking as John Steadman, and he's not speaking on behalf of my client.

Mr. Chairman: Mr. Finlayson, I think I can agree with what you said just now that really, as far as the Court is concerned, it won't matter too much what conclusion our committee comes to. I think it might be helpful for us to know what both lawyers thought about it but if it comes to a Court interpretation they are not going to take a legislative committee's opinion to decide the law on the matter.

I don't know whether you want to press it further, Mr. Shibley.

Mr. Steadman: I am extremely loath to answer the question, Sir.

Mr. Shibley: I realize you may be loath to but I want to get from you as much as I can, what was the intention of the parties and yourself in ^{the} employment of that term.

Mr. Steadman: I can't testify as to the intention of Canada Square.

~~Mr. Shibley: Well what did you understand when~~

~~Mr. Steadman: I understand the privilege~~

~~Mr. Shibley: Well all right. What do you understand~~

(Tape H-2147 follows)

Sept. 5/73
5.50 to 5.55 pm
DT

(Mr. Steadman)

~~Testify as to the intentions of Canada Square~~

Mr. Shibley: Well, what did you understand when you employed the --

Mr. Steadman: *Any communications there* are privileged.

Mr. Shibley: All right, well, what do you understand -- what was your intention in using that term?

Mr. Bullbrook: Really you can't *in fact he didn't* use the term.

Mr. Shibley: IT IS his document.

Mr. Bullbrook: It was really not his document.

I must say I agree with Mr. Finlayson here. I mean it would be the intention of the parties to the document and the first rule would be they would look at the words and if there was ambiguity they would try to arrive at the intention some other way, but it wouldn't be Mr. Steadman's intention.

Mr. Shibley: Except that he was there at the time, and are you telling me that anything you know as to the intentions of the parties is privileged?

Mr. Steadman: As to the intentions of Canada Square?

Mr. Shibley: Well --

Mr. Steadman: Yes. As to the intentions of Ontario Hydro, you have already had testimony from Mr. McCallum.

Mr. Shibley: You weren't present at any meetings between say, Mr. Moog and Mr. Candy and anybody else for Hydro at which the intention of Canada Square referable to that phrase was under discussion?

Mr. Steadman: On only one occasion did I ever meet Mr. Candy outside the presence of his solicitor.

Mr. Shibley: That is not what I asked you. I asked you whether that clause was ever discussed between --

Mr. Steadman: And at that meeting the clause was not discussed.

Mr. Shibley: Was that clause ever discussed in the presence of persons other than Canada Square wherein the intentions of Canada Square were recorded?

Mr. Thomson: May I speak to the witness? *Mr. Chairman: Yes*
Mr. Thomson: *Yes, any objection to that?*
Mr. Chairman: Is this going to help you, Mr. Allan?

Sept. 5/73
5.50 to 5.55 pm
DT

Mr. Allan: How do I know? I don't know what he is going to say.

Mr. Steadman: At any meetings at which these provisions of the letter were discussed, ~~the~~ Hydro and its counsel argued for use of some form of cost, replacement cost, or whatever. We argued for ~~the~~ use of appraised value and I don't think that at any of those meetings did we get ~~it~~ into an analysis of what appraised value meant from ~~Canada Square's~~ Canada Square's point of view.

Mr. Shibley: I see.

Mr. Deans: Can I ask a question?

Mr. Chairman: Mr. Deans.

Mr. Deans: You use the words "appraised value." You don't recall the argument in favour of Canada Square being based on market value?

Mr. Steadman: That certainly wasn't raised at any meeting with Hydro's representatives.

Mr. Deans: That was never raised at any meeting with Hydro's representatives?

Mr. Steadman: That I can recall at the time.

Mr. Bullbrook: Was it then ~~just a question~~ of costs or appraised value?

Mr. Steadman: It was a negotiation as to which term was going to be ~~dropped~~ ^{dropped} into this letter.

Mr. Bullbrook: What was the alternative term then other than appraised value?

Mr. Steadman: Hydro was arguing for cost.

Mr. Bullbrook: Cost, yes.

Mr. Shibley: Have you any information as to why this is a subject of a separate agreement?

Mr. Steadman: It was discussed at a meeting in, I think ~~March~~ October 20 or 21, something like that, that it would be a separate agreement and at this point in time I cannot remember why we decided that it should be a separate agreement.

Mr. Shibley: Mr. McCallum's note would indicate that Canada Square was insisting upon it being a separate agreement. Have you no recollection as to why they were insisting?

Sept. 5/73
5.50 to 5.55 pm
DT

Mr. Steadman: I just can't remember why it was a separate agreement at this point in time, other than that it seemed to Canada Square at any rate not a terribly important document.

Mr. Bullbrook: Not a terribly important document?

Mr. Steadman: Not really.

Mr. Shibley: Mr. Steadman, not that I have been ~~am~~ expecting you to be particularly informed but I feel in terms of completeness I should ask you certain questions. Have you any knowledge or information as to the person or persons who telephoned Mr. Don Smith of Ellis-Don which would have led him to make the comments to Mr. Manthorpe and Mr. McAuliffe?

Mr. Steadman: Only what I have read in the newspapers.

Mr. Shibley: I have no further questions, Mr. Chairman.

~~Mr. DEANS: I just want to put one question, it won't be long. You summarized you~~

(H-2148 to follow)

Sept. 5/73

5:55 - 6 pm
C.B.

~~live on further questions Mr. Chairman.~~

Mr. Deans: I just want to ask one question. It

won't be long. You comment ^{ed} that your recollection was that this was not a terribly important document. Was it not the subject of extensive discussion between Canada Square and Ontario Hydro?

Mr. Steadman: Yes.

Mr. Deans: It was, and yet you contend that the document was not important though it was the subject of some intensive discussion?

Mr. Steadman: *I think the effect of it to Canada Square was not important.*
~~I think the effect that that would be effective if Canada Square was going forth.~~

Mr. Deans; The effect, [?] Can you recall ^H I don't know when you breach your confidence, you are going to have to stop me. But can you recall the discussions as to the importance of knowing to ~~begin~~ ^{begin} with perhaps Mr. Moogs's actual costs of the erection of the building, in relationship to that document?

Mr. Steadman: I'm sorry I don't understand the question.

Mr. Deans: Well were you present at the discussions that took place in which it might have been put forward, let me say it was put forward by Hydro that the actual costs of the construction of the building were important to determining the value of the building?

Mr. Steadman: Yes.

Mr. Deans: Were you present at the meetings where there was discussion with regard to Mr. Moog believing that Market value was a more appropriate value to place on the building than any other value?

Mr. Steadman: Appraised value?

Mr. Deans: No, I want to separate appraised and market value. I want to draw a distinction between the two. Market value being a value that someone would pay for a building that is already there. Were you present when Mr. Moog suggested that

Sept. 5/73

5:55 - 6 pm

C.B.

(Mr. Deans)

market value ought to be the basis for any determination of the value of the building?

Mr. Steadman: It may well be that that was raised in the course of the negotiations. I just can't remember, I'm sorry.

Mr. Deans: And you don't think that that was a very important document?

Mr. Bullbrook: NO he don't^{ES} say that; he said Canada Square didn't think it.

Mr. Deans: Well I'm sorry, okay I ask you, you don't think Canada Square thought it was very important?

Mr. Steadman: *That was my impression.*
~~As a matter of fact, I think so.~~

Mr. Bullbrook: Would the reason for that be - would you permit me?

Mr. Deans: Yes, sure.

Mr. Bullbrook: I ^{alert} ~~heard~~ Mr. Thomson and he might want to jump in here. Would the reason for that be ~~that~~ that Canada ~~Square~~ Square regarded the benefits accruing to Hydro under that document ~~as~~ nugatory? They weren't going to get any benefits.

Mr. Steadman: I believe that is correct.

Mr. Deans: And they thought perhaps it was window-dressing.

Mr. Bullbrook: Because they were quite content that the appraised value - right - would be of a nature and kind and amount that the benefits under the clause really wouldn't exist. I'm sorry, you really answered that before.

~~Mr. C. B. (Inaudible)~~

Mr. Steadman: Yes.

Mr. Chairman: Any other questions of Mr. Steadman?

~~Mr. Steadman you haven't been in that seat for very long, thank you very much for being with us this evening.~~

Mr. Steadman: Thank you sir.

Sept. 5/73
5:55 - 6 pm
C.B.

(Mr. Chairman)

Mr. Steadman you haven't been in that seat for very long, but I think you found it fairly hot. Thank you very much for being with us this evening.

Mr. Steadman: Thank you sir.

Mr. Walker: Mr. Shibley made reference to ~~about~~ the possibility of sitting this evening and sitting on Friday and he's fallen into the trap that many of us fall into and that's that many of us have made plans otherwise, and of course this evening a number of the members, not myself, but others have made plans so they couldn't be sitting. Friday, many of us had made plans and so we can't sit that day. However we haven't made our plans for next week and I would like to make sure that we don't go away from here this week thinking that we may have the evenings off next week. I think we should block them aside, I think we should be prepared to go Monday night and to go Tuesday night and Wednesday night and if necessary Thursday night to finish off the matter. ~~I just don't like to block off the list.~~ Well I've looked at the list that Mr. Shibley has and I'm satisfied that it can be accomplished next week. Frankly I think we just have to make sure that we set aside enough hours next week to do it.

Mr. Chairman: I'm asking you all to save your evenings. I realize we can't all be here, Mr. Renwick, on his way out, gave me the times he was free next week, he is free most evenings. I hope we won't have to get into the evenings, I certainly ask you to save Fridays.

~~Mr. Shibley: I'm asking you all to save your evenings.~~

~~Mr. Shibley~~ I'm asking you to save the evenings next week but I'm realizing that we may not all be able to be here all of this time, and ~~if~~ Mr. Shibley still requires some time for *preparation*.

H-2149-1

~~(Mr. Chairman)~~

~~Evening and work, but I'm saying that we may not sit in the
to be here and at this time. And Mr. Shibley still requires some
time for preparation.~~

Mr. Walker: When you say you are asking us to save it, do you mean you are asking us to make sure we are going to be here those nights?

Mr. Chairman: Save them, so you can be here if the committee decides it wants to sit, that is all I am saying.

Mr. Walker: Well what I would like to see us do is make those decisions early. Mr. Shibley, surely in fairness to him, we have to give him time to make arrangements to bring people in?

Mr. Chairman: Let me just give as an example, It is not by way of being critical of Mr. Renwick, but there was a half an hour of questioning today in connection with dates arising out of a question that Mr. Renwick asked. Now I think,

Mr. Walker: Some of the members do have interests.

Mr. Chairman: What I am saying is we are putting pressure on Mr. Shibley, and I think reasonably and rightly so. But at the same time he is not responsible for calling all of the shots on this thing because ~~the members~~, he doesn't know what questions the members may want to ask. And certainly the members aren't going to give up their rights or privileges of asking these questions. So all I am saying, we may ~~be~~ if we get bogged down, I think Mr. Shibley can arrange a programme that he can get through his witnesses in the course of the day. Now if we get into a great deal of crossfire or delay from some reason beyond his control, or members asking questions, those are the occasions we may want to get into the evenings ~~sessions~~.

Mr. Walker: ~~Chairman~~ Mr. Chairman, I just don't want to find us in a position next Thursday night, a week tomorrow, of Mr. Shibley saying he has so many witnesses to bring in it is going to run us into the following week and maybe even the following. I want to make sure we get them all over. Mark my words now, Mr. Chairman, I am reserving them at this point, and I am reserving my evenings for next week, and I think it behoves us to make sure we sit

H-3149-2

(Mr. Walker)

sufficiently to accommodate all the witnesses whom he wishes to bring forward. I just want to make it very clear that I don't want to find ourselves in a position where towards the end of the week we are into embarrassing squabbles.

Mr. Chairman: Well I think some of us, certainly Mr. Renwick, put his position on record very well today that he can't go after, that he has made other commitments. I think that applies to most of us.

Mr. Shibley: Mr. Chairman, I would just like to remind everyone else that there are the witnesses themselves involved. Just for example, I'd hoped, ~~to deal~~ in addition to the four witnesses I've mentioned, to deal with Mr. Gordon tomorrow - five packed in.

Mr. Gordon had very responsible, difficult matters. He had to absent himself today, yesterday, Monday, Tuesday of next week. And I have said to Hydro's counsel, "Well I don't want to interfere with Hydro's business, so I will have to deal with him on Wednesday".

Mr. Rasmussen has been away on holiday. Mr. ~~Twig~~ ^{Off better and you} is ~~not here either~~.

And this is not as easy a chore, especially ~~when you have~~ now that we are getting to a point where I am hoping to put in four or five witnesses a day to get it cleaned up.

There is some very important evidence coming up yet referable to the financial end of this thing.

Mr. Allan: I was wondering, Mr. Anson-Cartwright, how long would you expect his evidence to take?

Mr. Shibley: I'm hoping that with written material up front such as we have been dealing, if you notice, with the brief of documents Mr. McCallum's evidence went much more quickly. And I think Ames' people will go much more quickly because it is all in as well.

I have asked Mr. Anson-Cartwright to do a written brief so we can table it as an exhibit, and he will simply be explaining it. Now I think we may be into a measure of questioning of him. It may take a day to deal with him. I am hoping not, but it might.

But there is Mr. Mink, Mr. Nastich. Mr. Dean, Mr. Lamb, all on the financial side of Hydro. There are four right there. There is still Mr. Gordon to be called. ~~This is in addition to the~~

(Mr. Shibley)

This is in addition to the witnesses we have mentioned. I am now to recall Mr. Smith and Mrs. Shuttleworth on Monday next. I am trying to remember if there was anybody else. That's a lot of evidence to package ~~and~~ ^{and} put in the limited number of sitting days we have got ahead of us. *I am going to try.*

Mr. Walker: We will just have to expand the hours to meet it.

Mr. Shibley: Well, that's very easy to say, you know, but I am in the throes of preparing for the next day's effort including communication with witnesses, preparing my briefs, studying documents and putting in the evidence all day long.

Now, Mr. Walker, I am trying and that's as far as I am prepared to be pushed. I am not going to make any commitments to anyone that ~~we~~ can meet that deadline. I will make a best effort to do so. As far as I am concerned, if we have to sit next Saturday and Sunday to get it done, that's fine, too, but, subject to the witnesses being willing to come.

The point of the matter is I don't appreciate, frankly, this kind of additional pressure that I am submitting myself to to try and meet a deadline. That timing was set before we lost two days last week. For quite good purposes, mind you, it turned out extremely well but, nevertheless, we did lose the best part of Wednesday ~~and~~ ^{and} Thursday of last week ~~and~~ I am not prepared to say just for the sake of sitting an extra day or two for completeness that I am going to cut away this or that.

Mr. Walker: We are not asking that, Mr. Shibley.

Mr. Shibley: As I say, *...*

Mr. Chairman: Well, I think we *...*

Mr. Shibley: I would ask you not to force the issue further. I am doing my best *...*

Mr. Walker: We are not forcing the issue with you. *400* ~~that~~ we are really saying is ^{to} make sure that we are available for sitting next week to accomplish the witness that you have in mind.

Sep. 5/73
6.05-6.10 pm
V.H.

Mr. Shibley: That's fine. I am telling you right now that I would like the committee members to have Friday set aside. Whether or not we should sit evenings may well turn upon whether I feel the evening is better spent in me preparing for the next day or carrying forward with the witness who is already in that box and whose evidence is not yet complete. If you are really intent on finishing next week, then set the evenings aside and if we need them for one purpose ~~or~~ the other, fine.

Mr. Walker: Well, they are aside and I assume that we will probably need them.

Mr. Chairman: Well, you are speaking ^{that} you have set them aside; Mr. Renwick has indicated to me that he's quite prepared except for one or two appointments to meet at various times. I am not asking you all to commit yourselves ^{told} but I am just asking you to be prepared to sit in the evenings if it will expedite the work so that we can finish next week.

Mr. Genest: Mr. Chairman, there is one matter that deals with this timing. Hydro expects the opportunity to be able for its counsel to make closing submissions.

Mr. Chairman: Mr. Genest, I suggested earlier, I think in fairness to you and to Canada Square, the two people who are deeply involved in this matter, that would be a reasonable and fair thing to do. In discussing it the other day with the committee in ~~the~~ camera, I think I am permitted to say this, that the thought was that maybe written submissions might be fair. Now the problem with written submissions, as I said, they don't necessarily ^{get} the light of day that what you might say here would get the light of day. In the back of my mind, I have thought that this is the sort of thing that might be equivalent to an address to the jury and that you would be going on without too many interruptions, I would hope. There might be a few questions of clarification, and ~~if~~ it might be done ^(the evening or) ~~in~~ maybe on the

(Mr. Chairman)

a Saturday morning or something of that nature or even, Mr. Walker, don't get too excited, Monday of the following week, if necessary

Mr. Genest: Now, it is of some importance to Hydro to make its submissions, to make its closing position public. I would ask that ~~we~~ ^(important) be permitted to make it orally and its also ~~submit~~ that we be given a little time to prepare. I know how anxious Mr. Walker is to finish everything by Friday but I try and interpret that as meaning finishing the evidence by Friday and I would certainly like the opportunity. It's my people who are going to be mostly in the box next week, that entails a lot of work on my part as well as Mr. Shibley's part.

Mr. Shibley: Quite right.

~~Mr. Genest: And I would like a reasonable opportunity at least the weekend to prepare some kind of accessible~~

H-2151 follows

Sept. 5/73
610-6.15p.m.
B.A.

H-2151-1

Mr. Genest:

And I would like a reasonable opportunity, at least the weekend, to prepare some kind of a sensible submission, and I do urge upon the committee that Hydro regards that as a very valuable right and only its just due.

Mr. Bullbrook: Yes, I think so. I would want to subscribe to that. I think they should have the opportunity. I think you used the phrase, "in the light of day," and I think that is what you intended, Mr. Chairman, that there would be public so that the press would then carry, perhaps, what Hydro would consider leavening.

Mr. Chairman: That is the only reason, Mr. Walker. I appreciate the urgency and some of the members would say, "We have made commitments, we have to get on with our other work".

Mr. Walker: Mr. Chairman, there is no doubt that Hydro has to have the opportunity to present its submissions, none whatsoever in my mind, and, in fact, on my little sheet that I was showing to Mr. Shibley when ~~we~~ we were reviewing the various witnesses that we had, I had "submissions written" at the bottom. All it really does is impress me with the fact that we had ~~as~~ sure as hell better sit during the evenings, next week, if we want to make sure that we have sufficient time for these ~~boys~~ ^{lawyers} to make their presentations properly.

Mr. Chairman: Mr. Genest, though, is saying that he is not prepared to do it next week.

Mr. Walker: He is not necessarily saying that. It depends on how we finish up, I suspect. He has to have time to do it, that is granted, Mr. Chairman; I am not trying to take anything away from his right to prepare his case, and if we happen to end up Friday at 4.30 in the afternoon, then surely, the weekend is appropriate, but I ~~am sure~~ ^{think} we can beat that deadline if we do a little work on it.

Mr. Chairman: Well, Mr. Genest, you have heard the

Sept. 5/73
6.10-6.15p.m.
B.A.

(Mr. Chairman)

evidence, at least the evidence of the committee; you have heard the expression ^{ed opinion} of one ~~or~~ or two of the committee members and I think it is the consensus ^S that, provided you are not going to go into a long oration, ~~we~~ we would appreciate verbal presentations from yourself and from Mr. Finlayson in regard to it. I don't think there are any other people that are so involved as Hydro and Canada Square that they need to give presentations. I am not saying if somebody comes forward and asks to make a presentation we wouldn't perhaps ^{Permit} ~~submit~~ their counsel to do so, but at the present time, I only can see yourself and Mr. Finlayson.

^{W.}
Mr. Newman: Mr. Chairman, just in closing, like Mr. Renwick, I have a tight schedule too, and I have set up my schedule. I realize that these people have to be heard. I am quite prepared to sit next week in the evenings. Perhaps we ^C can hear some one who is going to make a long dissertation ^{and whom you} ~~and~~ won't have to ask too many questions, you could set them up in the ~~the~~ evening.

Mr. Chairman: I think Mr. Genest is worried about preparation but, in any event....

Mr. Walker: You don't have to worry about preparation, we will give you time.

Mr. Genest: The pithier it will be, the longer the preparation.

Mr. Chairman: A little humour, too, Mr. Genest. It has been a long hard four months.

Mr. GENest: Well, I read a quotation, the other day, in the Bible, ~~about~~ that I thought might be appropriate.

Mr. Chairman: ~~When~~ When do you get time to read the Bible?

Mr. Genest: I read it every night. It was something about for 40 days and 40 nights. I think we have passed that now. ^t They wandered in the wilderness and they were tempted by the devil and angels spoke unto them. ~~But~~ Every word was appropriate.

Sept. 5/73
6.10-6.15p.m.
B.A.

Mr. Walker: WE are ^{waiting}~~nothing~~ for the angels.

Mr. Genest: St. Mark.

Mr. Chairman: I think you are getting a few of your biblical stories mixed up together there.

However, we will wait to hear from the angels and I hope at some time we get a message from them.

The committee adjourned at 6.15^{delock.}p.m.

APPEARANCES

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Gregory Rice

G.D. Finlayson, QC

J.A. Bradshaw

C.R. Thomson

Ontario Hydro counsel:

James McCallum, QC

Solicitor, Campbell, Godfrey and Lewtas:

D.J. Steadman

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, September 6, 1973

Morning session

2152-2183

Sept. 6, 1973
10.05-10.10 a.m.
M.F.

H - 2152 - 1

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 10.05 o'clock, a.m., in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order without the help of Mr. Allan this morning, and I guess he will be along very shortly.

We have Mr. Zwig all ready to give evidence to us on behalf of Horizon, but in that connection I would like to introduce to you Mr. Sid Robins, who is his solicitor, and incidentally the Treasurer of the Law Society of Upper Canada. Now that name I know has some objection to you, Mr. Hodgson, but that is still the name of the Law Society, and Mr. -----

Mr. R. G. Hodgson: You have got a good memory, Mr. Chairman.

Mr. Chairman: Mr. Robins is the chief man in that society so I want you to be nice to him, Mr. Hodgson.

Mr. R. G. Hodgson: I will try my best.

Mr. Chairman: And Mr. Garrow, of course, is still with us, representing A. E. Ames. Mr. Shibley?

Mr. Shibley: Will you swear the witness, sir?

WALTER ZWIG, Sworn

Mr. Shibley: Mr. Chairman, I have again compiled a file, a brief I might say, of documents selected from the Horizon file, which I would like to be made the next exhibit. They are in reverse order, so to speak. They are in the order we found them in the file and I will be dealing with the documents starting from back to front so that if all committee members might have that file.

Mr. Chairman: Are you concerned about the press?

Mr. Shibley: No, I don't think there is any problem. There is no problem.

H - 2152 - 2

(Mr. Shibley)

Now, Mr. Zwig, you are president of Horizon?

Mr. Zwig: Yes.

Mr. Shibley: And that is a company that has been engaged in the construction and development field for some years?

Mr. Zwig: About 17² years.

Mr. Shibley: 17? Would you tell the committee some of the developments with which your firm has been connected?

Mr. Zwig: Well, some of the better known developments are the Prudential building at King and Yonge; National Trust building; Continental Insurance building — all in the King-Yonge area; Procter^e and Gamble building, the Foster building at St. Clair; the Canadian National Railways station and divisional offices in London, Ontario, and we are now involved, or have been, for the past eighteen months to two years, involved at the north-west corner of Eglinton and Yonge in a large development.

Mr. Shibley: Yes

Mr. Zwig: And in a large development in the heart of downtown London.

Mr. Shibley: Did you also do the Travellers Building?

Mr. Zwig: Yes, the Travel^eers building.

Mr. Shibley: Yes, and with respect to these buildings, were these buildings in whole or in part built for your own account or were some of them done on a development basis with a tenant established to take a lease -----

Mr. Zwig: In most cases, in practically every case, we had the tenant before we embarked on the venture.

Mr. Shibley: They were what we call development or proposal type undertakings, is that correct?

Mr. Zwig: Yes.

Mr. Shibley: So that in terms of the type of undertaking that was coⁿtemplated by Ontario Hydro for its new head office building, and the submission your firm made on

Sept. 6, 1973
10.05-10.10 a.m.
M.F.

H - 2152 - 3

(Mr. Shibley)

January 17, your firm had the experience that you have outlined to this committee?

Mr. Zwig: Yes, we have had considerable experience in this form of development.

Mr. Shibley: Yes, thank you. Going to your brief of ~~the~~ files, or the brief I have compiled of the documents, if you go to the back of the file, in terms of chronology, ~~we~~ sorry, Mr. Chairman, we just didn't get time to recompile these papers but if everyone will work from the back

Tape H - 2153 follows

Sep. 6/73
10.10 to 10.15 am
fvk

(Mr. Shibley)

~~.....~~ I'm sorry, Mr. Chairman, we just didn't get time to reshuffle these papers but ^{if} everyone will work from the back.

Mr. Chairman: Two hundred and twenty-six - I didn't number it before. It's number 226.

Mr. Shibley: Thank you. It's the first page. It's the Proposal for Ontario Hydro and it sets out the requirements. Do I take it these are the broad specifications provided to you in the early stages of your efforts to make a submission?

Mr. Zwigg: Yes, this is what we term ~~as~~ a fact sheet that our architects and engineers prepare for us ~~and~~ We then take all the information that this fact sheet produces and utilize it in putting together our costs.

Mr. Shibley: Right. Then, coming forward a ~~map~~ couple of pages it's noted: Building completed by 1974; proposal by January 15. Was that the date on which you were asked to have your proposal in?

Mr. Zwigg: Yes.

Mr. Shibley: When ^(were) you asked to make the submission? How long prior to January 15?

Mr. Zwigg: I think it was in the fall of the year. We had a number - we had two or three meetings with the Ontario Hydro architects. I would ~~have~~ say somewhere early in November.

Mr. Shibley: Just to assist the committee members ~~and~~ ~~not~~ without going into them with the witness, because we've been over these, exhibits ~~49~~ 49 through to 51 have to do with Horizon. Exhibit 49 makes reference to a meeting between Mr. Zwigg and Mr. Sissons on the afternoon of September 15 wherein Mr. Zwigg expresses again his interest in the development. I don't think we need to get into it. He lists, in that letter, a variety of buildings with which his company has been associated - buildings he's already given in evidence. Exhibit 50 is a memo ~~from~~ ^{of} Hydro, of September 22, wherein Mr. Sissons refers to his discussions with Mr. Zwigg and says: "Horizon will obviously be one of the organizations

Sep. 6/73
10.10 to 10.15 am
fvk

(Mr. Shibley)

from whom we should solicit a proposal." December 21, exhibit 51, references a meeting with Mr. Zwig, Mr. Dean and Mr. Candy wherein it's referenced that Mr. Zwig says he could raise money with Metropolitan, where he was advised of the preference to use ~~Adm~~ Adamsons as an associate architect, and wherein it says: "He is going to submit a proposal on a per square foot per annum cost by January 15", so that it would appear that's the date on which Mr. Zwig and representatives of Hydro sort of made firm the understanding that your firm was going to make a submission?

Mr. S Zwig: Yes.

Mr. Shibley: Then, at the bottom of that exhibit 51, "Any escalation in this price will apply to labour of maintenance only and will not affect the capital cost structure for the life of the agreement." Exhibit 52 is the submission itself that we'll get to later. I don't think I need ask the witness any questions in that respect. I want to move forward. I notice that on that same page the floor size is referenced. Can I take it, Mr. Zwig, that the area of the floor and the height of the structure all enter into the economics of constructing any building?

Mr. Zwig: Definitely, the larger the floor area, particularly this size of floor area, with a low structure, ~~is~~ and anything under 25 stories might be termed a low structure today, makes for great economy

Mr. Shibley: Yes. When you're talking about economy you're talking ~~about~~ in terms of cost of construction?

Mr. Zwig: That's right.

Mr. Shibley: Mr. Tatham has enlarged upon that.

I just wanted that basic premise confirmed by you. Moving along through the file, John Dean ~~is~~ is referenced on ~~the~~ ^{another} page. He's the man you had discussion with. The next page again sets forth further work ~~on~~ material and I notice within it mentioned ~~is~~ made of such things as a tunnel, ~~.....~~

(Tape H-2154 follows)

September 6, 1973
10.15 - 10.20 a.m.
M.R.

(Mr. Shibley)

~~made of such things as tunnel,~~ escalators, 150 foot-candlepower. Was that the basis, in terms of lighting, that your firm quoted on - 150 foot-candlepower?

Mr. Zwig: Yes.

Mr. Shibley: Were you ever told that that specification might be changed to something less?

Mr. Zwig: No.

Mr. Shibley: Then there's broadloom in lieu of tile. Were you told for whose account the broadloom was?

Mr. Zwig: Yes.

Mr. Shibley: And whose account?

Mr. Zwig: Hydro.

Mr. Shibley: Yes. I think we can move on then to the next two pages dated January 5th. These are typewritten pages and again this is part of your work-up material, some of the facts upon which you were going to formulate your proposal. Is that correct?

Mr. Zwig: That's correct.

Mr. Shibley: Yes.

Mr. Chairman: I'm not so sure all the committee are with you.

Mr. Shibley: I'm sorry. January 5th is a series of clipped documents, typed, with some notations.

Mr. Chairman: I've just noted your file doesn't seem to be in the same order as mine or else ~~per~~

Mr. Shibley: It should be.

Mr. Chairman: Maybe I was the one who messed it up. Anyway, I've got the document now.

Mr. Shibley: All right. It's not important except that I wanted it clear that your firm was given, although orally, a great many of the specifications necessary to make up the proposal.

Mr. Zwig: Oh, yes. We had one of our people at Hydro for the better part of a day and a half.

September 6, 1973
10.15 - 10.20 a.m.
M.R.

Mr. Shibley: Yes. And those ~~and~~

Mr. Zwig: And he had ample opportunity to go over all the information.

Mr. Shibley: Sure. Notwithstanding that the specifications were given orally, they were sufficiently complete to enable you to make your submission?

Mr. Zwig: Yes.

Mr. Shibley: Now, then, there are two long form pages which appear to be dated January 5th and this appears to be again calculations of mortgage payments and also of maintenance cost. Is that correct?

Mr. Zwig: That's right.

Mr. Shibley: I notice on the bottom of the second page you have a \$1.31 per foot. Is that for maintenance?

Mr. Zwig: That's right.

Mr. Shibley: And then you put in for \$1.40 as part of your submission?

Mr. Zwig: That's right.

Mr. Shibley: Giving you some elbow room on that score?

Mr. Zwig: That's right.

Mr. Shibley: Now, dealing with the maintenance portion of your submission, Mr. Zwig, the base year for maintenance was as of the year of the submission, 1972. Is that right?

Mr. Zwig: Correct.

Mr. Shibley: So that there would, in your view, have been escalation as to maintenance cost on the day the building was completed and undertaken?

Mr. Zwig: That would only be ^{an} escalation that we could document, such as an increase in the minimum wage - something of that sort.

Mr. Shibley: Was there ever any follow-up discussion with your firm as to whether the maintenance cost of \$1.40 should be with a base year of 1975 or 1974?

September 6, 1973
10.15 - 10.20 a.m.
M.R.

Mr. Zwig: I don't recall. I don't think there was any follow-up.

Mr. Shibley: I ask you that because two of the other proposals contained information - in the case of Y and R, they said they would do maintenance at \$1.25, with a base year of 1974, and I think Canada Square said \$1.45 as of a base year of 1975. Was there every any follow-up discussion with you in an endeavour to have you accept your \$1.40 on a base year later than 1971?

Mr. Zwig: Not that I can recall.

Mr. Shibley: All right.

Well then, we go on with the documents in the file. I think we can skip the next two or three. ~~are~~ ^{are} they only in here to indicate to the committee ~~1~~

Mr. Genest: Excuse me - ~~these~~ these questions are going on the record. Did you say the base year for Horizon was 1972?

Mr. Shibley: I thought it was.

Mr. Genest: As I read the proposals in Exhibit ~~and~~

Mr. Shibley: I'm sorry, 1971 - year end.

Mr. Genest: 1971.

Mr. Shibley: I thought it was ~~was~~ ^{the year} they made it.

Mr. Genest: ^{To} Clear the record, The other question that you asked imported some figures from Y and R, which I'm not sure are accurate.

~~Mr. Genest: I think the record is clear. The other question that you asked imported some figures from Y and R, which I'm not sure are accurate.~~

H-2155 to follow

Sept. 6/73
10:20 - 10:25 am
M.S.

(Mr. Genest)

M Mr. Shibley: What is the Y and R? It was ---

Mr. Genest: \$1.35, I believe, was Y and R,
wasn't it?

Mr. Shibley: No, I don't think so. I'm sorry,
Ellis-Don was \$1.23, Y and R was \$1.35. You're correct. Horizon
\$1.40 and Canada Square \$1.45.

Mr. Genest: That's right.

Mr. Shibley: Thank you.

Mr. Genest: And ~~the base~~ the base year of
Canada Square, as I understand it, was '76 and not '75.

Mr. Finlayson: It was '75.

Mr. Shibley: It was '75.

Mr. Finlayson: It was '75, but it takes a year
to implement this.

Mr. Shibley: But the base year for the submission
purposes was '75.

Mr. Genest: Right.

Mr. Shibley: Now then, I've only included these
further ~~and~~ documents to indicate to the committee that this firm
made an indepth analysis of the matter before they made a submission.
I want to move forward to the long form page of January 11, 1972.
It is styled, "Ontario Hydro," ^{filed} Received tel/fax from Steve Allis of
Metropolitan." Are you with me, Mr. Zwig?

Mr. Zwig: Yes, I'm reading it.

Mr. Shibley: And moving down, now you're talking
financing, is that correct?

Mr. Zwig: Yes.

Mr. Shibley: And it says: "Apparently Met does not
expect profit on the deal! They are in it for the ~~the~~ ^{major} plus the
benefit of ~~depr~~ ^{reclamation} as a 50-50 owner. It took a while for this to get
through! Steve speaks in terms of Horizon getting benefit of 50-50

Sept. 6/73
10:20 - 10:25 am.
M.S.

(Mr. Shibley)

deal via depreciation & a builders² profit! I told him there was no profit being considered ... only a fee on management. He agreed to management fee which would be covered by a separate agreement to which Met is not a party. When this had all filtered through, I mentioned that our tax laws were up in the air ^{and} if we could not get full benefit of depreciation, we would let them have a greater ^{part,} ~~part~~. He liked this idea because the interest rate will be based partially on the benefit they get from the depreciation -- i.e. greater depreciation gives lower interest ticket. At the moment they are hoping to reduce the 8-3/4 figure to 8-1/2."

Now, that's the gist of your exchange with the Metropolitan at that time.

Mr. Zwig: Yes.

Mr. Shibley: There were three elements entering into a return. One being depreciation; second being builders² profit, and the third being a fee on management. Those were the only possible sources.

Mr. Zwig: That's right.

Mr. Shibley: I go on then. The next page, on January 14, you set out projected costs. And the first item is construction costs, \$1,400,000 at \$24.00 less ^{\$}400,000 equals \$33,200,000. So that was your projected cost of construction, then, of this building?

Mr. Zwig: Yes.

Mr. Shibley: And then you got your architects fees in at \$1,650,000. Land is Hydro, so you've got nothing. Petition allowance, there were to be none -- it's open landscape. Leasing commission, there was no commissions payable.

Mr. Zwig: That's right.

Mr. Shibley: I'm trying to speed you along by leading you a little bit. Legal fees \$150,000. Taxes during

Sept. 6/73
10:20 - 10:25 am.
M.S.

(Mr. Shibley)

construction ~~is~~ nothing, because again, therefore, the account of Hydro. Equipment and curtains. Were you expecting to have to curtain this building?

Mr. Zwig: Normally we either supply curtains or venetian blinds. This is one of our normal forms.

Mr. Shibley: Then, a contingency allowance of \$800,000; and interest during construction—this is interim financing, is that correct?

Mr. Zwig: That's right.

Mr. Shibley: \$3,200,000. For an overall cost of \$39,000,000—you rounded it out to \$39,000,000. Is that correct?

~~Mr. Shibley~~
~~Mr. Shibley~~: January 14, 1972. I would ask the members to particularly note the construction costs as computed, because I want you later, when I'm dealing with Hanscomb Roy, to relate these figures to certain of the figures that are set out in their own calculations. Now then ---

Mr. Bullbrook: Mr. Shibley, I take it that I'm missing something that you are not missing. Why less \$100,000?

Mr. Shibley: I was just going to lead up to it.

Mr. Bullbrook: Oh, I'm sorry. You were going to ask that? Okay.

Mr. Shibley: Would you please explain that?

Mr. Zwig: That was a possible saving if we

~~and a possible saving if we~~

Sept. 6/73
10:25-10:30 am
PLG

(Mr. Zwig)

possible savings if we could use ^{2a} certain construction methods which hadn't been determined at the time this was made up. It had to do with the substructure area and if certain methods ~~were~~ had been approved, we could have saved \$400,000. We never got that far.

Mr. Shibley: Then towards the bottom you have got:

"Assumed projected costs, \$39m million."

That is in the overall, inclusive of finance and architectural, or what you might call design cost. The mortgage you were contemplating was \$39 million with an actual cost of \$36 million, and you have got note of profit \$3 million. Now what is that all about?

Mr. Zwig: Well, in working up this sort of proposal, because the specifications we had, although adequate enough to make a proposal, ~~we~~ were still fairly hazy and we felt that we could go back once we got further along and, in conjunction with Hydro, effect certain savings. ~~Had~~ Had that been the case, that would have resulted, in our view, we should have been able to pull three million dollars out of the job.

Mr. Shibley: Yes, So that even at your lower rental rate, as part of your submission which was, I believe--wait. You didn't give it as a rate. It was broken up later.

Mr. Zwig: No. We gave it as an annual figure.

Mr. Shibley: Right.

Mr. Zwig: Many times, when a project of this size is being tendered, depending on the market, it is found that rather large savings can be effected. ~~And~~ Again, we just never got to the point where we had to prove that out.

Mr. Shibley: In that latter connection, once your submission was made, with the exception of one meeting in April that I will come to later, there was no follow-up with your firm?

Mr. Zwig: That's right.

Mr. Shibley: All right. ~~So that~~ And this would be

a hoped-for profit of \$3 million, based upon construction costs, etc., as per the break-out above?

Mr. Shibley: There might be savings effected?

Mr. Shibley: Now, then, you worked out the cost of the money below \$39 million, 30 years at 8 5/8, to come up with your cost of financing, permanent financing?

Mr. Shibley: If I could move forward from there again, it appears on 3 handwritten pages, page 1, 2 and 3, coming forward on the file, that you were given still further particulars respecting vertical transportation, etc. I am interested in the elevating. I notice that you also were contemplating 16 elevators; one freight elevator, one shuttle from the basement to the lobby, and one Lampson conveyor. These were all part of your ~~an~~ proposal?

Mr. Shibley: And, again, the auditorium is mentioned and so on. I am not going to get into the detail with you, but in general terms Mr. Zwig, again, by the time you made your submission, did you have sufficient particulars to come up with a figure that you considered to be relatively firm?

Mr. Shibley: Yes. ~~And~~ then I want to come forward to what I consider an important document of ~~the~~ April 7, 1972:

Tape 2157 follows

(Mr. Shibley)

"Further to today's meeting with Mr. Mink and yourself, we are prepared to accept the conditions set forth in your memo of February 9, and would confirm further that the rental for the entire building would be between \$3.02 and \$3.06 per square foot, the difference being accounted for in the amount of space Hydro might rent back to us." Now then, in that connection, the \$3.02 figure would be for a financing of \$39 million?

Mr. Zwig: Correct.

Mr. Shibley: At 8 5/8 percent. Is that correct?

Mr. Zwig: Yes. That is correct.

Mr. Shibley: And what you were, in effect, saying is, on the basis of having to ~~be~~ borrow \$39 million to build this building, at that rate we will fund that portion of it with a rental to you of \$3.02 and in addition, we want \$1.40 for ~~maintenance~~ maintenance on a base year of 1971?

Mr. Zwig: That's right.

Mr. Shibley: So your proposal ~~is~~ as of April 7 was for an overall of \$4.42 in rental?

Mr. Zwig: Yes.

Mr. Shibley: I have one separate exhibit, Mr. Chairman, which is on ~~an~~ altogether unrelated topic. I am going to the political contributions of Horizon. Unless people have any questions to put on this area.

Mr. Bullbrook: I have some questions. I don't know whether they are directly related to this area and you might be going into it. One thing that I wanted to ask Mr. Zwig, one of the considerations of Hydro in dealing with Canada Square, Mr. Zwig given to the Legislature as justification for dealing with Canada Square was the fact that they had undertaken to solely deal with this particular development. During the course of your negotiations with the representatives of Hydro, did they discuss that with you as a condition precedent to doing business with Horizon?

Mr. Zwig: No.

Mr. Bullbrook: They at no time ever ~~put~~

Mr. Zwig: No.

Mr. Bullbrook: ~~had~~ conveyed the thought to you that

Horizon should only deal on this particular project at the time?

Mr. Zwig: No. It was never raised.

Mr. Chairman: Mr. Deans.

Mr. Deans: Thank you. Mr. Zwig, during your

~~the~~ discussion with Hydro, were you ever made aware of the fact that they expected a building of the value of \$34 a square foot?

Mr. Zwig: No. They were certainly emphatic about the fact that they wanted a very fine building, and the specifications indicate that 150 foot candles and some of the other specifications that they gave us really indicated what they expected, but it was never put in terms of so many dollars a square foot.

Mr. Deans: Did they ever discuss with you that the building that you proposed was considerably less in cost than they were willing to pay?

Mr. Zwig: No.

Mr. Deans: Did they ever discuss with you that the building that you proposed was of an inferior quality to what they expected?

Mr. Zwig: No.

Mr. Deans: Would you be able to tell me what the maintenance cost would be on a base year, say of 1973?

Has there been a drastic change?

Mr. Zwig: Yes. Labour costs, which are the biggest ingredient in maintaining a building, have gone up. Today, I would project about \$1.60.

Mr. Deans: About \$1.60. If you were bidding today, \$1.60 would likely be where you would be. This might be an unfair question, but can you think back to the time that you were dealing with Hydro, were you satisfied with the way in which

H 2157-3

Sept. 6/73
10:30-10:35 am
PLG

(Mr. Deans)

you were treated in regard to the proposal that you made and the time given for the proposal to be put in and the treatment given to the proposal when Hydro got it?

Mr. Zwig: Yes. I felt that we had been given whatever information we asked for and, as I indicated, at one stage we asked permission for one of our engineers to spend a couple of days or a day and a half with the Hydro people going over the original building plans and trying to get the sort of information that can only be secured by conversation, and I would say that we got all the cooperation we asked for.

H 2158 follows

Sep. 6/73
10.35 to 10.40 am
fvk

~~(Mr. Zwig)~~

Mr. Deans: If you had been told that Hydro was considering no less than \$34.00 a square foot what material changes would you have made in the proposal? Could you ~~has~~ have put ^(more into the) anything ~~more into the~~ proposal to produce a better quality building if you had been told that you had \$34.00 a ~~xx~~ square foot to work with?

Mr. Zwig: Oh, I dare say.

Mr. Genest: Excuse me, Mr. Deans, could we make it clear that the \$34.00 includes interim financing and architect's fees because there may be some confusion about that figure?

Mr. Deans: No, I understand it; yes.

Mr. Shibley: I think, perhaps, I'll have the clerk put before the witness ^(what is) exhibit 67 so that he can have the schedule. It follows page 21 in front of him. Would you do that, please?

Mr. Deans: ~~Wx~~ What I'm really asking, I suppose, ^{is} would there have been a substantial change in the quality of the construction of the building if you had had \$34.00 to work with? If you had been looking at a \$45 million project as opposed to ~~ix~~ a total of \$39 million project, or \$36 million?

Mr. Zwig: That's a difficult question to answer. If the end user of a building wants to have \$10.00 marble instead of \$8.00 marble, certainly this could increase the cost but that wouldn't ~~xx~~ make the building any more presentable, or any more valuable, or any better.

Mr. Deans: Would it make it any more durable?

Mr. Zwig: No. It's strictly a matter of individual preference because the durability of the materials would have to be vetted by the architects who certainly wouldn't want to be associated with anything but the best for a building of this calibre and ~~degrees~~ in view of the location of the building. I could see some slight increase but I'm in an embarrassing position because I don't know what the preferences ^(are) of the people ~~are~~ who make the

Sep. 6/73
10.35 to 10.40 am
fvk

(Mr. Zwig)

decision. I have ~~built~~ built buildings for many important clients, equally as important as Ontario Hydro, and built them at the cost that I presented to Ontario Hydro, and they seemed to be quite satisfied.

Mr. Bullbrook: Could I ask you ⁱⁿ that ^(connection, a) question of the co~~x~~ollary; your use of the word valuable is of great significance to us, at least to me, ~~and~~ You said that if you put in \$10.00 marble the building wouldn't be any more valuable than if you put in \$8.00 marble. Do I take it correctly from that that if you put in \$8.00 marble the building wouldn't be any less valuable than if you put in \$10.00 marble?

Mr. Zwig: That's right. It's a matter of aesthetics. It's a matter of what appeals to the individual who is making the decision and, if any of you gentlemen have been involved in building a house where the wife has taken a liking to a certain material regardless ^{of} whether that material is as good as the one originally specified, that material is used. It doesn't necessarily mean that the product is better. You're dealing in an area ~~that~~ where I wouldn't set myself up as a judge.

Mr. Bullbrook: I didn't intend to interrogate this witness on the question of appraised ~~a~~ value but I thought that the use of the word valuable was extremely germane and very interesting.

Mr. Chairman: Mr. Allan.

Mr. ~~Max~~ Allan: Mr. Chairman, I just ~~had~~ have a couple of questions. I would like to ask Mr. Zwig if he had any doubt in his mind as to whether or not he could have completed the building within the time limit that was set by Hydro?

Mr. Zwig: We've never missed a date yet in 20 years.

Mr. Allan: I don't know whether you answered my question or not!

Mr. Zwig: I have no doubt at all that we would have finished it on time. Anything can be done with money.

Mr. Bullbrook:

~~That answers you. You should know.~~ That answers you. You should know.

H-2158-3

Sep. 6/73
10.35 to 10.40 am
fvk

(Mr. Bullbrook)

you were the Treasurer!

Mr. Allan: The second question I had in mind and
I don't know whether Mr. ~~Swig~~ Zwig wants to answer this or not,
~~But, I'm wondering whether, in his financial.....~~

(Tape H-2159 follows)

September 6, 1973
10.40 - 10.45 a.m.
M.R.

(Mr. Allan)

~~I don't have doubt Mr. Zwig wants to answer this or not~~
but I'm wondering whether in his financial analysis of the whole proposition what weight he gave to the benefit of the depreciation that ~~she~~ would receive through the years on the building?

Mr. Zwig: Frankly I'm not able to answer that because I don't get involved with that sort of detail. I look to people in my office to give me those answers, but suffice ~~to~~ to say that the figures were attractive and sufficiently attractive for us to put in a proposal and we would have been very happy to have been selected on this.

Mr. Allan: What I had in mind was I'm not a tax expert either, ~~but there will~~ I would expect that depreciation would be allowed on this building, which would be ~~me~~

Mr. Shibley: Putting it another way, in making your proposal, did you depend upon the ability to take depreciation to make an acceptable return to your firm?

Mr. Zwig: Yes.

Mr. Chairman: Mr. Newman.

Mr. Deans: I do want to ask another question.

Mr. Chairman: All right, Mr. Deans and then Mr. Renwick.

Mr. Deans: Thank you. What was your general attitude towards the development of the commercial space at the corner of College and University?

Mr. Zwig: We weren't overly enthused but we felt that it was a necessary part of the development and we also felt that if the commercial area didn't move immediately, it would certainly move once this building was occupied.

Mr. Deans: You were satisfied the future prospects for it were reasonable?

Mr. Zwig: Yes.

Mr. Chairman: Mr. Renwick.

September 6, 1973
10.40 - 10.45 a.m.
M.R.

Mr. Renwick: Mr. Zwig, leaving aside entirely the Ontario Hydro head office building and the method by which they arranged for the construction of the building, as a general question related to your experience in the ~~field~~ field, is it possible to ~~devise~~ devise a system through an invitation to various developers to submit proposals which would have, sort of, the best of both worlds. That is, the benefit of the cost comparison on the traditional method of tendering for construction of buildings on the one hand and ~~what~~ what has been referred to as the entrepreneurial talent or imaginative content ~~of the~~ of the developer who makes a proposal, so that the person making the decision can have a set of proposals from different developers in front of them and can then make a decision with respect to cost and quality where their judgement, always recognizing that there is a judgemental value in all of these things, where their judgement could be sound and valid. What would be the best way in which that could be accomplished?

Mr. Zwig: Well, I think that a consulting firm or committee of consultants authorized to vet developer proposals might have smoothed things and made it a little easier for the people who eventually had to make the judgement.

Mr. Renwick: To carry out the basic evaluation of each of the proposals and the comparisons?

Mr. Zwig: Without going into it too deeply I think that there could have been a little more professional approach had a consulting organization or a team of consultants been given the job of evaluating the developer proposals, but other than that I think that developer proposals have proven to be the most efficient and most economical way to get things done, because not every developer-entrepreneur is ready every time to reach - to take a little extra risk. The wheel goes around and everyone reaches a point where they want a job very badly and they will do their utmost and you get ~~some~~

Sept. 6/73
10:45-10:50 am
PLG

(Mr. Zwig)

~~reaches a point where they want a job very badly and they~~
~~will do their utmost~~ ^{will} ~~get~~ the ~~the~~ benefit of that, but in order to achieve that benefit I think that you must have professionals dealing with the ~~developers~~ developers, and in that regard I would suggest that a committee of professionals who have had experience with developers, usually consulting engineers in the various fields.

Mr. Renwick: Then, I take it ~~that~~ that there would be no reason in your mind why, if properly carried out, a government body, responsible for the expenditure of public funds should not use the developer route for this kind of an operation. Thank you, Mr. ~~Chairman~~ Chairman.

Mr. Chairman: I'd like to carry on from there if I might, Mr. Zwig. In regard to using public ~~the~~ funds with this design-build scheme, you have built a good number of buildings. Have many of those been under ~~the~~ the developer proposal basis? where you built for somebody else?

Mr. Zwig: Well, we own all the buildings we built, but we have competed with other developers in presenting a proposal to, let us say the Prudential or the Travelers people, and we were awarded the deal before ~~we~~ we set pen to paper, so that the system ~~is~~ is exactly the same as has been carried out here, except that I think that we found ourselves dealing in a more ~~more~~ professional manner, that's all.

Mr. Chairman: Well, the point I wanted to come around to is ^{the} ~~a~~ matter of ~~the~~ disclosing your costs to the people you were building for. Now I gather in your case that hasn't been an issue. There has been no need to disclose your costs because you continued to ~~own~~ own. Is that correct?

Mr. Zwig: No. We have disclosed costs because ~~we~~ ^{they} usually the people we built for have supplied the financing, so they have asked for disclosure of cost.

Mr. Chairman: And have you opened your ~~banked~~ books to them on all occasions?

Sept. 6/73
10:45-10:50 am
PLG

4

Mr. Zwig: Wherever they have asked for it, yes.

Not on all occasions, but wherever that was the understanding and undertaking, yes.

Mr. Chairman: Well, can you tell me, with the developer proposal basis across the industry, is it usual to disclose costs?

Mr. Zwig: That depends on the terms of the deal. If that is made a part of the deal originally, yes.

Mr. Chairman: Well, that is what I was asking about "usual," because here, as you know, ~~with the~~ ^{at the} Canada Square it is part of the deal that costs will not be disclosed and that is ~~what~~ ^{why} I wondered what the usual practice was.

Mr. Zwig: I don't think the word "usual" can be used then, because it depends on the way the deal was structured originally. In some cases a large institution for whom we have done most of our building will say, "We don't care what the building costs you, all we are going to pay you is X dollars," and that is the end of it. In other cases the deal is structured so that the rent is a direct result of ~~auditing~~ ^{audit} costs.

Mr. Chairman: Each is on ~~their~~ ^{its} own and you are not prepared to say whether ~~more~~ of them are on the basis of disclosure or less are on the basis of disclosure.

Mr. Zwig: I really couldn't. Thinking, I'd say about half ~~our~~ ^{our} properties were done one way and half the other.

Mr. Chairman: On this one, on your proposal, were you prepared to disclose your costs?

Mr. Zwig: Certainly. We use a general contractor. We do not build with our own forces, so that a disclosure is a very simple matter. We just take the general contractor's document and turn it over.

Mr. Chairman: Well, I was following up Mr. Renwick's line of questioning. That is what bothers me, ~~when~~ ^{if} you use public funds and don't disclose. Now ~~now~~ ^{now} presumably, when it is a bid, the competition is what guarantees the fairness of it,

(Mr. Chairman)

but when you select a person and...

Mr. Zwig: Well, you could make that a condition, that the winning proposal will also have to make disclosures.

Mr. Chairman: I have no further questions.

Mr. William Hodgson.

Mr. W. Hodgson: In that regard, Mr. Chairman, before we leave that, it would be much more difficult though to disclose costs. I wouldn't say more difficult, ^{there would be} but more bookkeeping involved, more opportunity to pad books and it would be with a general contractor. ~~You say you are a general contractor, he said in the~~

Tape H 2161 follows

H - 2161 - 1

(Mr. W. Hodgson)

~~opportunity~~
~~fall through, and it would be a~~
~~general contractor.~~ ~~If~~ Say you use a general contractor,
he puts in the price ~~and~~ ^{and} I mean you can build up the cost quite a
bit if you were going on cost, couldn't you, by disclosure in
the books, if you are using your own forces?

Mr. Zwig: Well again I think that experienced
consulting people could very quickly identify any areas like that,
because that is what they do for us when we are dealing with a
general contractor.

Mr. W. Hodgson: And have you ever had any ~~is your~~
experience where a building was appraised by qualified appraisers
to get the true cost of the building?

Mr. Zwig: No.

Mr. W. Hodgson: Do you think we could get a true cost
of the building by qualified appraisers?

Mr. Zwig: Well I don't know what you mean by true.

Mr. W. Hodgson: Well, the cost, the cost of the building.

Mr. Zwig: I'm really not able to answer that because
I don't have any experience.

Mr. Chairman: Have you any more questions, Mr. Shibley?

Mr. Shibley: Yes.

Mr. Genest: Mr. Chairman, may I ask that some questions,
through you, be put to the witness?

Mr. Chairman: All right. Have you got them there, or
are you prepared to put them through me?

MR. Genest: Well if I could just put them orally and
ask if you would put them - I wonder if the witness might be asked
what other projects were actively being pursued by him at the
time of this proposal?

Mr. Chairman: Can you, ^{for us,} answer that question, MR. Zwig?
Were there any other projects that you were actively engaged
in at the time?

H - 2161 - 2

Mr. Zwig: We were actively working on the Yonge-Eglinton project at the time we made this submission.

Mr. Chairman: Any others?

Mr. Zwig: And we were also working on the London project.

Mr. Chairman: So this Hydro building, if you had received it, would not have been an exclusive object of your attention at that time?

Mr. Zwig: No, it was never suggested that it had to be.

Mr. Shibley: Would the fact that you were engaged in these other two projects have interfered or limited your firm in any way in meeting your obligations and the timetable for the Hydro head office building?

Mr. Zwig: No, because again, we use general contractors so that we wouldn't be involved to that degree.

Mr. Chairman: Anything else, Mr. Genest?

Mr. Genest: Yes, sir, I wondered, Mr. Chairman, if the witness might be asked if the overall figures would include - I take it they would - a general contractor's profit?

Mr. Chairman: Can you answer that, Mr. Zwig?

Mr. Zwig: The answer is yes.

Mr. Genest: And would the witness have obtained a firm price from a general contractor early in the proceedings if he had been awarded the project?

Mr. Zwig: We had been given an upper limit.

Mr. Shibley: You had been?

Mr. Zwig: Yes, based on a square footage basis. The contractors we deal with are able to say, "We will guarantee to deliver the building at a price not to exceed X dollars," and that's why I refer you back to ~~then there's~~ that \$3-million area which may or may not have been available to us, but certainly we knew where we were going.

Mr. Shibley: Well then you are referring to your handwritten notes of January 14 where you put in the cost of

H - 2161 - 3

(Mr. Shibley)

construction at \$33,200,000 with a possibility of it being done for three million less. Is that what you are telling us, that you have actually had discussion with general contractors that gave you a price?

Mr. Zwig: Yes.

Mr. Shibley: And that that price was in the \$30 million range?

Mr. Zwig: Yes.

Mr. Shibley: To build this building?

Mr. Finlayson: To build his building.

Mr. Shibley: I'm sorry, to build the building according to the specifications of the unit?

Mr. Zwig: That's right.

Mr. Shibley: Who was the architectural firm that you intended dealing with?

Mr. Zwig: Page and Steele.

Mr. Chairman: Anything else, Mr. Genest?

Mr. Genest: That's all, Mr. Chairman, thank you very much.

Mr. Shibley: Were the construction firms from whom you had elicited costs of constructing the building in the order of \$30 million, were they large and reputable?

Mr. Zwig: I would say probably the largest - V.K. Mason.

Mr. Shibley: So V.K. Mason were willing to build the building according to specifications provided to you by Hydro - I am talking only construction costs now - for \$30 million?

Mr. Zwig: Well \$33 million was the figure.

Mr. Shibley: I see. You thought three million might be ~~be~~

Mr. Zwig: We saw it and again, from experience, had we been awarded the project we would have worked with the architect, That to try and achieve some saving. ~~It~~ is our business.

Mr. Shibley: Now when you mentioned to the Chairman of this committee that you were prepared to open your books of account and so on,

2162 follows

Sept. 6/73
10:55 - 11:00 am.
M.S.

(Mr. Shibley)

—show them the pricing. If you had effected that \$3 million saving, and the construction contract had come in at \$30 million, that figure would have been made known to Ontario ~~the~~ Hydro. Is that correct?

Mr. Zwig: If that had been a condition of the awarding of the proposal.

Mr. Shibley: And, with respect to this proposal, the amount of the permanent financing and the cost thereof, was part of what made up the rental rate. Is that correct?

Mr. Zwig: That's right.

Mr. Shibley: That's why you broke it out in your April letter. Is that correct?

Mr. Zwig: That's right.

Mr. Shibley: So, that you were working on the basis that the rental rate would be governed by, in a chain reaction type of thing, cost of the building \$30 to \$33 million, required to be fully funded by a mortgage in that amount at 8 5/8? Maybe a little less if you could get it?

Mr. Zwig: Right.

Mr. Shibley: And the cost of that money being \$3.02, according to your April letter, on the basis of the plans and specifications you were given.

Mr. Zwig: That's right. Also, I should add that in projects of this size there are always changes through the construction period. And again, from experience, it's not always feasible or possible to charge for those changes.

Mr. Shibley: I understand.

Mr. Zwig: So, that we have to have some leeway.

Mr. Shibley: Well, that's why you have your contingency allowance in here of \$800 ---

Mr. Zwig: No, the contingency allowance was for mistakes we make.

Sept. 6/73
10:55 - 11:00 am.
M.S.

Mr. Shibley: Oh, I see. Well, you're one of *the* few to admit to making mistakes, Mr. Zwig. More credit to you. But you say you could run into extras?

Mr. Zwig: Yes.

Mr. Shibley: With respect to the design and interim financing costs, they are a percentage factor of what is the total cost of the ~~build~~ building. Is that not so?

Mr. Zwig: Well, interim financing costs would be, but in a project of this size architectural fees would be fixed.

Mr. Shibley: I see. I notice that you have an allowance in here for architectural fees of \$1,650,000.

Mr. Zwig: That includes all the consulting engineers. Mechanical, electrical, structural, acoustic consultants. All the various professionals who would be required.

Mr. Shibley: Do I take your last answer then to mean that in a project of this size, whether the project cost \$30 million or something more than \$30 million, that that would be a fixed fee?

Mr. Zwig: Yes.

Mr. Genest: Mr. Shibley, I'm sorry. Mr. Chairman, a couple of more questions, if I may ask the witness to be asked. At what stage -- well, let me put it this way: would a firm price contract with the general contractor be ~~be~~ entered into prior to the commencement of construction?

Mr. Zwig: That would depend on when the drawings were complete. We have worked with general contractors over the last 15 or 20 years, and in many cases construction has been underway for several months before a contract has been signed. And, as a matter of fact, I just signed one this past week on a project that's been underway for six or seven months. But we would give our undertaking and we would provide a bond or whatever was called for by Hydro, and that would be our responsibility, to ~~be~~ *ensure* ~~sure~~ that a contract was entered into.

Mr. Genest: What I'm just trying to get at, Mr. Chairman, again through you, approximately at what time in the construction—is it early or late in the construction process that a firm price is arrived at with the general contractor?

Mr. Zwig: Usually as soon as drawings are completed. That's the time ~~when the price is~~^{1 2} determinant.

Mr. Genest: And ~~once~~^{once} the firm price is established, would the general contractor expect to be paid for any extras put in ~~after~~ after that price has been arrived at?

Mr. Zwig: Yes.

Mr. Deans: At whose expense?

Mr. Zwig: Well, in the case of this proposal, it would have been the developer's² expense.

Tape H 2163 follows

Sep. 6/73
11.00 to 11.05 am
fvk

(Mr. Deans)

~~Mr. Deans: I am not sure of this proposal it~~

~~would have been the developer's expense~~

Mr. Deans: So it would have made no difference whether the firm price is arrived at early or late because the total cost of the project was already set ^{Out}?

Mr. Zwig: Yes.

Mr. Deans: And it wouldn't have altered the total cost of the project?

Mr. Zwig: No, that's the risk the developer takes.

Mr. Shibley: I don't know whether this is a fair question of you. Did you get down to the selection of an engineering firm for the installation of mechanical work in the building?

Mr. Zwig: Yes.

Mr. Shibley: Who was to do it for you?

Mr. Zwig: It was the firm of Granek and Chisvin, who had done mechanical and electrical for some rather substantial buildings such as the Commerce Court development, the O'Keefe Centre and all our buildings. They've done ~~xxxxxxx~~ large projects in Winnipeg. They've done projects at Harvard University. And we are ^(building) and have been building for about a year and a bit, the only electrical energy project in the city of Toronto other than Commerce Court.

Mr. Shibley: We've had some discussion before this committee as to the quality of the air conditioning and heating system, the mechanical installation that might have been incorporated in the building by the various developers. Can you give the committee some indication of what was intended by your firm for this building?

Mr. Zwig: One of the conditions laid down was that it be heated with electricity as a source. As I just said, we are building a large, close to two million ~~square~~ square foot project using that system and our consultants are the only consultants who've had real experience with that sort of system and we would

Sep. 6/73
11.00 to 11.05 am
fvk

(Mr. Zwig)

have installed a system comparable to that in the Commerce Court development which is the latest system that our consultants have been able to devise.

Mr. Shibley: Thank you.

Mr. Chairman: Mr. Hodgson has indicated he has one further question.

Mr. W. Hodgson: One question - you built the Travelers building?

Mr. Zwig: Yes.

Mr. W. Hodgson: What did that cost per square foot?

Mr. Zwig: I'm embarrassed. I don't remember. I think the total cost was around \$30.00 or maybe just a little under.

Mr. W. Hodgson: And that was built when?

Mr. Zwig: It was finished in 1970, I believe.

Mr. W. Hodgson: Construction costs wouldn't be as high then as they are now? That's for sure.

Mr. Zwig: No.

Mr. W. Hodgson: Either material or labour?

Mr. Zwig: No, construction costs today would be about 10 per cent for certain materials, maybe 12 per cent, higher. That is, for this project, ~~it~~ ^{they} would be between 10 and 12 per cent higher.

Mr. W. Hodgson: That's material?

Mr. Zwig: That's the total.

Mr. W. Hodgson: That's the total cost. Thank you.

Mr. Bullbrook: What's your floor area at Travelers? Have you any idea?

Mr. Zwig: The gross area is about ~~17,500~~ ^{17,500} - 18,000 feet.

Mr. Bullbrook: This would be about 40,000.

Mr. Zwig: Yes, well, there are pluses and minuses. This is a larger floor which is more economical in concrete. It also has large spans which ~~has~~ ^{have} certain extra costs but, on the whole, it would be a very economical structure because it's not a high structure.

Sep. 6/73
11.00 to 11.05 am
fvk

Mr. Shibley: When you say economical you mean it would cost less per square foot to build than some buildings which are less economic?

Mr. Zwig: It would cost less per square foot to build than a 17,000 foot floor.

Mr. Shibley: Yes.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: Mr. Zwig, ^(did) this electrical firm, engineering firm, do the Richardson building in Winnipeg?

Mr. Zwig: Yes.

~~Mr. Chairman: Mr. Deane:~~

~~Mr. Deane: We have nothing on the record.~~

(Tape H-2164 follows)

September 6, 1973
11.05 - 11.10 a.m.
M.R.

Mr. Chairman: Mr. Deans.

Mr. Deans: I just wanted to ask him - do we have anything on the record showing what kind of building you and design were proposing to build, the style of the building?

Mr. Shibley: ^{No.}
^ Mr. Zwig, your firm was never asked to submit drawings, is that not so?

Mr. Zwig: That's right.

Mr. Shibley: Remember the evidence is that they were all told not to submit drawings but the only one that did was Canada Square.

Mr. Zwig: We suggested that the calibre would be not less than the Travelers Building.

Mr. Shibley: Yes, that's right.

Mr. Zwig: To give some ~~an~~ comparison.

Mr. Chairman: Mr. Genest,

Mr. Genest: I'm sorry to make such a nuisance of myself.

Mr. Chairman: It's not your fault you getting these questions out of order.

Mr. Genest: There are just two more, I think, Mr. Chairman: May the witness be asked whether the source of ~~the~~ financing, his funds, were Canadian or American?

Mr. Zwig: They were Canadian dollars provided by a life insurance company from their Canadian business.

Mr. Shibley: So there would be no element of exchange risk involved in that planning?

Mr. Zwig: Absolutely none.

Mr. Genest: And the next question is the rate of \$3.02, which I think is in the April 7th letter, \$3.02 to \$3.06 per square foot. On what is that based? Is that gross or net or rentable square foot.?

Mr. Zwig: Based on the American standard of measurement which is the bible for the rental fraternity.

Mr. Genest: Net.

September 6, 1973
11.05 - 11.10 a.m.
M.R.

Mr. Zwig: It's really not net but it's not gross either.

Mr. Genest: Could we have that cleared up?

~~Mr. Genest: I am not sure I understand the question.~~

Mr. Shibley: Let's put it this way. That was based on the rentable area. Is that right?

Mr. Zwig: Yes. ~~the~~ the basis is that used by everyone in the development field.

Mr. Shibley: For calculating rent.

Mr. Zwig: For calculating rent.

Mr. Shibley: So that ~~may~~

Mr. Zwig: It's less than the gross area.

Mr. Shibley: Yes. That's the space factor against which tenants are charged rent.

Mr. Zwig: Right.

Mr. Chairman: All right. I think we are prepared to move on to the other factor.

Mr. Shibley: I only have one other subject to deal with. I'm producing to you a statement of your political contributions during the period 1970 to 1972, and ask that you confirm these to be such and make that the next exhibit, Mr. Chairman.

These are the correct figures, are they, Mr. ~~Zwig~~ Zwig?

Mr. Zwig: Yes.

Mr. Chairman: Exhibit 227. I'm embarrassed to have to ask you this, at least, I, as ~~chairman~~ chairman, in a sense am, but at the same time and because of the nature of what we are investigating I think it's reasonable that we should ask and you should produce.

Mr. Shibley: Now, Mr. Zwig, dealing with the contributions to the Ontario Progressive Party, that's the 1971 item of \$20,000 and the 1972 item, ^{Conservative} at the bottom, of \$7,500: Do I understand that in total this was \$27,500 and related to a pledge of that sum?

September 6, 1973
11.05 - 11.10 a.m.
M.R.

Mr. Zwig: Yes. That was at the time of the election.

Mr. Shibley: Yes. So that although the \$7,500 was paid in 1972, it was part of a total pledge of \$27,500 made at or about the time of the fall election in 1971. Is that correct?

Mr. Zwig: Yes, that's right.

Mr. Shibley: And then similarly, with respect to the two items for the Federal Liberal Party in 1972 of \$5,000 to the party and \$1,000 to one candidate, Was that related to the ~~election~~ federal election of that year?

Mr. Zwig: Yes.

Mr. Shibley: I have no further questions to ask of the witness, Mr. Chairman.

Mr. Chairman: Any ~~more~~ other questions?

Mr. Gaunt: Mr. Chairman, I have a couple of questions if you don't mind. First of all, Mr. Zwig, is it fair to ask you with regard to your political donations - was the donation in 1971 ~~collected~~ collected in person or how was the means of transmittal? Is that a fair question?

Mr. Chairman: I don't know whether it is a fair question, Mr. Gaunt. I don't know what you have in mind.

~~Mr. Gaunt: ... on this hearing.~~

~~Mr. Chairman: ...~~ or whether it has any bearing on this hearing or not.

Mr. Gaunt: Well, I'm not going to press it, Mr. Chairman, because maybe it ~~may~~

Mr. Deans: Well, Bill DAVIS didn't drop by and pick it up, did he?

Mr. Gaunt: It was a matter of interest. I'll have to consider whether it has any pertinence to the hearing or not. I'll consider that over the lunch hour.

The other question ~~that~~ I was wondering and I think Mr. Zwig touched on it in one of his answers, but did you at any time during the course of your negotiations with Ontario Hydro ...

H-2165 to follow

Sept. 6/73
11:10-11:15 am
PLG

(Mr. Gaunt)

~~at any time during the course of your negotiations with~~
~~Ontario Hydro~~ have the impression or the feeling that your submission wasn't being considered fairly, or that Canada Square had an inside track on the deal?

Mr. Zwig: No. We had all the cooperation that we solicited and I felt that if we wanted more information we would have had it.

Mr. Gaunt: So that at no time could you have asked for more cooperation from Ontario Hydro. What you asked for you got.

Mr. Zwig: That's right.

Mr. Gaunt: And the fact that you didn't know certain things that were being made available to other people, as the evidence shows to Canada Square, that was never really ~~part~~ part of your information and so you weren't concerned about it?

Mr. Zwig: Well, I would have been concerned. We ⁺spend a lot of money putting together these ~~new~~ proposals and I certainly wouldn't have gone to the trouble to arrange financing. Every time you arrange financing it is one time less you can do it for another project and we were fully under the impression that our proposal was being considered, and I'd like to think that ~~some~~ every time I make a proposal I win, but unfortunately that doesn't happen.

Mr. Chairman: Well, Mr. ~~Z~~ Zwig, thank you very much for your assistance to us this morning. You have been most helpful, and as you know, we had planned to visit your Traveler's building and view it. I apologize for the ~~fact~~ fact that we did not get there. I am not going to suggest that we will still have time to do it but some of us may decide to take a look at it personally.

Mr. Zwig: Well, they all had new uniforms last week.

Mr. Chairman: I thank you for your willingness to receive us and your help today. Thank you very much. We will have a recess for 10 minutes if we may, till 11.20.

Tap H 2166 follows

The committee resumed at 11:30 o'clock, a.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. Mr. Johnson, welcome back. You've already been sworn and I see Mr. Garrow is there to represent your interest. I would ask Mr. Shibley to proceed.

Mr. Shibley: I will ask the clerk to present to the witness the A.E. Ames file which is in exhibit.

Mr. Chairman: This is already in exhibit.

Mr. Shibley: Yes, I think it's exhibit 223. It's the whole file. Mr. Johnson, you've already identified yourself as being associated with Ames & Company and being the person having had most to do with Mr. Moog in connection with the permanent financing. If all the members have the Ames file in front of them I would just like to go through some of the documentation with Mr. Johnson.

I note that the first communication in connection with the Hydro building was in October of 1971. Is that correct?

Mr. Johnson: At that time I had no idea it was for Ontario Hydro.

Mr. Shibley: I understand. You didn't - you were not appraised of that fact until the following year. Is that correct?

Mr. Johnson: That would be correct.

Mr. Shibley: There ~~were~~^{two} really a series of two attendances which were interrupted, one in the fall of 1971, commencing on October 25, and another one starting on July 25, 1972. There was some interruption between the two. Is that correct?

Mr. Johnson: They were the significant meetings that we had, or conversations that we had.

Mr. Shibley: Right. Dealing with page one of this brief, it's indicated that on October 25 Mr. Moog was ~~ask~~ seeking ^athe funding of \$50 million and referenced the OISE lease as being tantamount to ^aprovincial guarantee. He arranged \$20 million, the balance of \$30 million to be raised in Canada, or asked for your opinion as to the rate at ~~which~~ which that balance might be raised

Sep. 6/73
11.30 to 11.35 am
fvk

(Mr. Shibley)

in Canada. Do I take it that what Mr. Moog was then seeking from you ~~is~~ assistance in raising \$30 million to supplement \$20 million he expected to raise in Switzerland?

Mr. Johnson: No.

Mr. Shibley: What was the situation?

Mr. Johnson: He was asking our opinion of the rate.

Mr. Shibley: Of what?

Mr. Johnson: He thought he could raise \$20 million

to complement the \$20 million.

Mr. Shibley: He wasn't asking you to get the money but just getting your opinion as to rate?

Mr. Johnson: He was not, no.

Mr. Shibley: And in respect of the rate, the next paragraph is informative. You said:

"I had discussions with ~~the~~ MJB", that's Mr. Biddington, "and RAG", that's Mr. ~~James~~ Gunn, —

Mr. Johnson: Gunn, yes.

Mr. Shibley: "of your bond department." Is that right?

Mr. Johnson: There were two.

Mr. Shibley: Yes.

Mr. Johnson: They're vice-presidents of Ames & Co.

Mr. Shibley: And would you tell the committee what information you received from them and passed on to Mr. Moog.

Mr. Johnson: Mr. Moog asked me a question of what we thought the rate would be and in discussing with those two people we felt that that rate would be something in the order of one-half per cent to ~~3~~ three-quarters per cent above the current Province of Ontario rate. WE therefore told him that in the current market the rate would be between eight and eight and ~~and~~ one-quarter per cent. I presume from that, although this memo doesn't show it, that the Province of Ontario bonds were trading publicly at about seven and one-half per cent.

Mr. Shibley: I see. So the rate that was being

Sep. 6/73
11.30 to 11.35 am
fvk

(Mr. Shibley)

quoted was in relation to the Province of Ontario bond rate?

Mr. Johnson: That's correct.

Mr. Shibley: And why would you adopt that approach to providing him with a rate?

Mr. Johnson: He had told me that it would be effective a provincial guarantee.

Mr. Shibley: All right. Then, if we may go on, you got a note:

"He will now enter into final negotiations with the province to ^{consummate} ~~consummate~~ their offer to lease, ~~and will advise within the next couple of weeks what the results of these negotiations are.~~

(Tape H-2167 follows)

Sept. 6/73
11:35-11:40 am
PLG

(Mr. Shibley)

~~Mr. Johnson:~~ ^{and} ~~he~~ will advise within the next couple of weeks what the results of ^{those} ~~the proposed~~ negotiations are. "xW
Would you tell us, please, what Mr. Moog said in that connection?

Mr. Johnson: I am sorry, Mr. Shibley, I can't remember what he said. All I can say is ^{those were} ~~that was~~ the words I used to ~~the~~ describe it in my file so I just have no recollection at all of what he said.

Mr. Shibley: From those words, Mr. Johnson, are we to infer that Mr. Moog, in his turn, said enough to you to make you think that he was expecting a decision to be made by whoever was going to build this project within the ~~the~~ next few weeks, and that that decision would relate to his selection as the developer for the project?

Mr. Johnson: I would assume that he had told me that he was negotiating and hoped to have a decision in the near future.

Mr. Shibley: Yes. I won't pursue it. Now, then, the next thing; On page 2 are some handwritten notes of ~~your~~ yours, ~~on~~ pages 2 and 3. On page 3 there is a computation of a return of approximately 20 ~~percent~~ percent. Now, in general terms, what were you doing on pages 2, 3 and 4 of this brief?

Mr. Johnson: Well, you asked me the other day when these were done. Now having had a chance to look at them, they would have been done at a very similar time to the memo being written ~~on~~ in October, 1971.

Mr. Shibley: Right.

Mr. Johnson: It was my attempt, for my own information, to try to calculate how you could put together a 15-year term loan with a 30-year fully amortized loan and make it work out.

Mr. Shibley: Yes. And you were also ~~calculating~~ calculating the return to the lending institution that was being asked to supplement. No?

Mr. Johnson: Nobody was being asked anything.

Mr. Shibley: You were calculating the return, I am sorry.

Sept. 6/73
11:35-11:40 am
PLG

(Mr. Shibley)

You were calculating the ~~1~~ return to the lending institution on the balance of \$30 million and the obligation to pick up the first 20 after 15 years, or whatever was left of the principal amount?

Mr. Johnson: No.

Mr. Shibley: ~~Was~~ What is this then?

Mr. Johnson: At that time I was told there was a \$20 million, 15-year term loan.

Mr. Shibley: Yes.

Mr. Johnson: And the suggestion, the question was, 'Could you raise \$30 million in the Canadian market place, or in Canadian dollars, to complement that, to raise a total of \$50 million?' I was trying to understand through these calculations, how you could put those two loans together and have them work out, based on a repayment ~~and~~ ^{from} a rental rate from the province of Ontario.

Mr. Shibley: I see. And then, on what I have marked the 4th page, "Offer probably very early in January", what do you mean by that?

Mr. Johnson: Well, it probably means that if a transaction is consummated, that is when it would possibly be offered.

Mr. Shibley: I see. I'd like to move -- did you then have any further discussion with Mr. Moog in October or even early November of 1971~~8~~, and prior to July 25 of 1972, referable to this project?

Mr. Johnson: There was no conversation that I ~~recorded~~ ~~reported~~ in my file but I just can't recall whether -- I am certain I talked to him at some ~~xxx~~ point during that period.

Mr. Shibley: Did you ever discuss the Prudential Insurance Company with Mr. Moog in 1971?

Mr. Johnson: I wouldn't think so.

Mr. Shibley: Were your discussions with him referable to Prudential all subsequent in point of time to July 25, 1972?

Sept. 6/73
11:35-11:40 am
PLG

Mr. Johnson: Yes.

Mr. Shibley: May we go on then? The next document on page 6, & my memory is that this was information provided to you by Mr. Moog in part at least. Is that correct?

Mr. Johnson: This is the memo dated July 25?

Mr. Shibley: Yes.

Mr. Johnson: I am sorry, my page isn't numbered.

~~Mr. Shibley: Yes. It is a memorandum that goes on for about~~



Tape H 2168 follows

Sept. 6/73
11:40 - 11:45 am
M.S.

Mr. Shibley: a memorandum

It is ~~not~~ that goes on for four pages, I think. And if you will just tell us what this is all about. First of all, it was a telephone call from Mr. Moog. Is that correct?

Mr. Johnson: It appears so, yes.

Mr. Shibley: And then you also had a meeting with him?

Mr. Johnson: I could have had.

Mr. Shibley: And what did he tell you in the course of those discussions?

Mr. Johnson: Well, he has suggested here that it might be possible, would it be possible... I'll go on to say again that we are conjecturing here ~~on this~~ how this could be financed. To borrow \$20 million in Swiss francs one year and \$20 million in Swiss francs in a subsequent year, the second year, and attempt to find someone who would accept ~~these~~ 15-year term loans. And grant a conventional 30-year fully amortized loan in the same amount.

Mr. Shibley: Mr. Johnson, did Mr. Moog tell you that he had arranged this type of financing with a major Swiss bank?

Mr. Johnson: I believe he said it was a major Swiss bank, yes.

Mr. Shibley: And did he tell you that he had arranged it?

Mr. Johnson: At this time I am almost positive that he said it may be possible to arrange the second \$20 million.

Mr. Shibley: Did he subsequently tell you that he had firmed that up?

Mr. Johnson: Not that I recall.

Mr. Shibley: But, in any event, the bank that he was referencing was a major Swiss bank?

Mr. Johnson: That was, I believe, the expression that was used.

Sept. 6/73
11:40 - 11:45 am.
M.S.

Mr. Shibley: All right. Would you carry on, please?

Mr. Johnson: Well, these are notes suggesting that the Swiss francs be lent to some major institution, lending institution. For example, Sun Life. It would be their responsibility for taking the risk of collecting the loan. There would be no exchange risk. And then the calculations go on to say that if this was worked out, there would be a ~~70~~⁷⁰ per cent balloon at the end of the 15th year. And he would like to amortize it over 30 years and so on.

Mr. Shibley: You can leave that whole set of documents now and go to the next one, which is another set of documents dated -- I think you told me this was sometime between July 25th to July 28?

Mr. Johnson: That's correct.

Mr. Shibley: Enumerated 1, 2, 3, 4, 5. And I'm only interested, again, ~~the~~ the ~~first~~ first two paragraphs explain the basic transaction. Is that correct? 'Borrow the equivalent of \$40 million Canadian in Swiss on a 15-year term at 6 1/2; in return ~~for~~ for supplying this money to a Canadian institution, obtain it for a mortgage commitment for \$40 million.' That was the basic thing that was under ~~exam~~ consideration?

Mr. Johnson: Yes.

Mr. Shibley: And then on the next page, you're computing what? Just looking at the last figure, 'interest return for 15 years,' what's that?

Mr. Johnson: Well, I presume that's my calculation of the potential return to the lender for the 16th to 30th years, of a loan that was structured in this manner.


Mr. Shibley: This would be based on that lender receiving one per cent on the whole of the loan during the first 15 years?

Mr. Johnson: No.

Sept. 6/73
11:40 - 11:45 am.
M.S.

Mr. Shibley: No? So, this is a return to the lender just for taking up the commitment for the balance of the term?

Mr. Johnson: No, no. He would be paid a rate 1 /
(was R_2)
at the proposal here ~~he~~ would be paid a rate one per cent
higher than the rate applicable to the funds he was borrowing.



Tape H 2169 follows

September 6, 1973
11.45 - 11.50 a.m.
M.R.

(Mr. Johnson)

~~...one per cent higher than the rate applicable to the funds
he was borrowing.~~

Mr. Shibley: From?

Mr. Johnson: From a Swiss bank.

Mr. Shibley: Yes. So that the lending institution that was Mr. Bradshaw called it doing a wrap-around deal, would realize an effective rate of 13 per cent? On this calculation?

Mr. Johnson: On this calculation, yes, that's right.

Mr. Shibley: You made other calculations based on different assumptions. I see ten and a half per cent and so on and I think we can leave that document. I just wanted to demonstrate to the committee what was in your mind. The next document, July 28, you made an approach to the Metropolitan Life wherein you say "they go straight but for 30 years - straight something for 30 years at nine and a half to nine and three-quarters." Would you explain that, please?

Mr. Johnson: Yes. It's notes of a telephone call. Where I asked Metropolitan Life if they would have any interest in borrowing \$40 million in Swiss Francs and lending against it \$40 million Canadian dollars fully amortized over 30 years. Their officer told me that they were uncommitted cash flows that they had changed their investment down the average term of 30-year loan, which was against their investment policy basically that it contained no inflation hedge, they would want a rate of nine and a half to nine and three-quarters.

Mr. Shibley: Right. And then the next page appears to be another turndown from the Sun Life. Is that correct?

Mr. Johnson: No, I think turndown is the wrong word.

September 6, 1973
11.45 - 11.50 a.m.
M.R.

Mr. Shibley: I'm sorry.

Mr. Johnson: These were telephone calls which were done ~~for~~ exploratory calls.

Mr. Shibley: Yes, M I understand.

Mr. Johnson: It was ^{on} a no-names basis. I at no point mentioned Mr. Moog. I at no point mentioned Ontario Hydro or the Province of Ontario. We were asking if this kind of a transaction would be of any interest to them, and in that respect it was a turndown.

Mr. Shibley: All right.

Mr. Bullbrook: I have one question before we leave that.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: It goes back a step. Is my memory correct that Mr. Zwig dealt with Metropolitan? Wasn't that his evidence?

Mr. Shibley: Yes.

Mr. Bullbrook: Was there any discussion as to Metropolitan ~~as~~ ^{an} equity participation at all? In your discussion with Metropolitan?

Mr. Johnson: My discussions with Metropolitan weren't on any firm basis. It was simply - there was no offer made to Metropolitan really.

Mr. Renwick: Mr. Chairman ~~say~~

Mr. Chairman: Mr. Renwick.

Mr. Renwick: I have two questions; one just to clarify that: When you said you spoke to Sun Life, of course, that is the Canadian institution ^{and} ~~met~~ the Metropolitan, would you have been speaking to New York or ~~any~~

Mr. Johnson: Yes.

Mr. Renwick: Not to the Canadian investment office?

Mr. Johnson: That's correct.

Mr. Renwick: Could you tell me ~~when~~ from your experience whether you would expect a large insurance company such as the Sun or the Met or Prudential or any of the large ones

September 6, 1973
11.45 - 11.50 a.m.
M.R.

(Mr. Renwick)

or medium large ones to be interested in such a transaction?

Mr. Johnson: No.

Mr. Renwick: In other words, your experience would be that the policy of ~~insurance of~~ that kind of insurance company is not to engage in the financial markets but to put out, at good investment, the monies which they receive from their policyholders; that that is their major purpose?

Mr. Johnson: That's correct.

Mr. Shibley: Let me go to the next document which is dated August 4, 1972. Would you please first tell us how you came to be in communication with anyone on behalf of Canada Square on that day?

Mr. Johnson: Well, I had a telephone call.

Mr. Shibley: Did ~~you~~ you ~~do~~


Mr. Johnson: A conversation.

Mr. Shibley: Did you make the call?

Mr. Johnson: I don't recall.

Mr. Shibley: I see.

Mr. Johnson: With Mr. Bradshaw. I suspect the prime subject of the call was not ~~Canada Square because we were dealing on another subject at that moment. Either he~~
~~or I~~



H-2170 to follow

(Mr. Johnson)

Canada Square, because we were dealing on another subject at that moment. Either he or I brought it up, I don't know which, and he advised me that Hydro were doing the financing in Swiss francs now, that apparently governmental regulation or exchange control regulations in Switzerland only permitted the Swiss to lend to one borrower once every three years and therefore there was no money for Mr. Moog in Switzerland.

Mr. Shibley: Had you spoken to Mr. Moog about the same subject before or at this time?

Mr. Johnson: No.

Mr. Shibley: Did you attempt to reach Mr. Moog at that time?

Mr. Johnson: I don't recall.

Mr. Shibley: I see. All right, will you carry on. Did you discuss this with him later?

Mr. Johnson: I would rather doubt it, although I don't recall that.

Mr. Shibley: Okay. Would you carry on please?

Mr. Johnson: Well, the rest of the conversation is that Mr. Bradshaw...

Mr. Shibley: What does it mean, "Will leave in abeyance for the time being"?

Mr. Johnson: Well, Mr. Bradshaw said, "Don't worry about it, don't do anything." I think I advised him I was leaving on a vacation that day, and the next one is just a note that suggests that if he wanted any more ⁴ or Mr. Moog wanted the information, they should contact Mr. Bellamy or Mr. Davies.

Mr. Shibley: Did you get any indication as to when in the interval between July 25, 1972, when you were first asked to consider the \$ 40 million Swiss funding, and August 4 when you were told that because of Hydro getting monies, there was no money for Moog, did you get any indication as to when that information was known to the Canada Square organization?

Mr. Johnson: No.

Sept. 6/73
11:50-11:55 am
PLG

Mr. Shibley: In any event, the first notification to you was in the course of this conversation with Mr. Bradshaw and ~~and~~ it may only have been incidental to another discussion you had with him on that day.

Mr. Johnson: That is correct.

Mr. Shibley: All right. Now then, the bottom has to do with ^{on} August 29, a discussion with Mr. Bradshaw?

Mr. Johnson: Yes.

Mr. Shibley: And talking about dealing with Equitable.

Mr. Johnson: No. Excuse me. That is conjecture on my part.

Mr. Shibley: Okay. Thank you. And would you carry on.

Mr. Johnson: He mentioned that Mr. Moog was now negotiating with a major U.S. lender. My conjecture, "probably Equitable." And the problems that they were having ^{were} that Equitable wanted to ~~was~~ commit immediately or the rate was going to be quite high and that ~~showed~~ their policy at that moment was not to invest in as good a quality credit as there was in this lease. They were looking for lower credit, higher rate transactions.

Mr. Shibley: Now just again in that connection, I notice the words "Higher rate than Ontario deserves". Was the thinking then being equated with what the rate should be for the province of Ontario?

Mr. Johnson: That is a very fine line.

Mr. Shibley: Well, I am thinking back on your earlier evidence that because of the provincial guarantee that the rates should only be somewhat higher than the provincial rates.

Mr. Johnson: I don't recall.

Mr. Shibley: When it ~~is~~ says, "Higher ~~is~~ rate than Ontario deserves", isn't that what that means?

Mr. Johnson: No.

Sept. 6/73
11:50-11:55 am
PLG

Mr. Shibley: If you are not prepared to pay a high-- Moog wasn't prepared to pay high interest rates to Equitable, having regard for the covenant involved, really.

Mr. Johnson: Well, I think ~~the~~ what that is saying is that Equitable were unwilling to commit at a rate which this kind of credit deserved.

Mr. Shibley: Yes. And the kind of credit you are talking about was a credit that was comparable to the province of Ontario.

Mr. Johnson: Yes.

Mr. Shibley: All right. We go on with the next ~~the~~ page. Have you been able to identify the timing of this document?

Mr. Johnson: No.

Mr. Shibley: You earlier indicated it was during the week ending September 22, ~~as~~ as your best recollection, and that it was the result of a meeting with Moog.

Mr. Johnson: That is correct.

Mr. Shibley: Now, is that still your best estimate of the timing?

Mr. Johnson: Yes.

Mr. Shibley: Now, I notice that you are still talking \$50 million at this time.

Mr. Johnson: That is correct.

Mr. Shibley: And the rate you are talking is 8 per ~~cent~~ cent. Was it 8 per cent or was it 8 per cent or better?

Mr. Johnson: I am sure it was 8 per cent or better.

Tape H 2171 follows

Sept. 6, 1973
11.55-12.00 a.m.
M.F.

H - 2171 - 1

(Mr. Shibley)

~~was it with the fact that it was a straight deal?~~

~~Mr. Johnson: I'm sure it was a straight deal.~~

Mr. Shibley: Eight per cent or better was the rate you were discussing on September 22nd, or during the week ending September 22nd. Now this, I take it, was at a point of time ~~when~~ when you were no longer considering Swiss funds but rather doing what you call a straight deal?

Mr. Johnson: That's correct.

Mr. Shibley: And I notice going down this document it says: "Ontario Hydro-document now says so, may be some question". What is that all about?

Mr. Johnson: I believe that is a discussion of the high credit lease.

Mr. Shibley: And when you say a high credit lease, did that in any way relate to a provincial guarantee being included in the documentation?

Mr. Johnson: No. ~~To~~ define high credit lease, this is a lease in which - I guess conventionally referred to as a net-net lease - but Hydro would continue, or would agree to pay rentals in an amount required to finance the building. I guess, agree to pay them in all circumstances really.

Mr. Shibley: All right. Coming down it says "U.S. guarantee - make payments in U.S. dollar". What does that mean?

Mr. Johnson: That meant that there was provision for exchange protection.

Mr. Shibley: I see. And then "can't go above eight per cent". Was there any reason why that position was taken?

Mr. Johnson: My recollection of it was that I was told that any costs above eight per cent were for the account of the developer and therefore the rate couldn't go higher than eight per cent.

Mr. Shibley: I see. Well then the next document is a

H - 2171 - 2

(Mr. Shibley)

document prepared by you on September 22nd outlining terms or certain information, the last line of which says, "financing \$50 million fully amortized". Was Mr. Moog still talking \$50 million, then, on that day?

Mr. Johnson: Yes, I would assume so.

Mr. Shibley: Now you went to New York on the 25th of September?

Mr. Johnson: Yes.

Mr. Shibley: And you met with both Metropolitan Life and the Prudential on that occasion?

Mr. Johnson: That's correct.

Mr. Shibley: Was this the first communication with the Prudential?

Mr. Johnson: Yes. Excuse me, the first communication would have been when the appointment was arranged, the day before or two days before.

Mr. Shibley: Yes. Referable to this transaction and aside from making the appointment to see them, this was the first time the Prudential was brought into the Hydro matter?

Mr. Johnson: Yes.

Mr. Shibley: Did you now know what project Mr. Moog was talking about?

Mr. Johnson: Yes.

Mr. Shibley: And was this the first meeting at which the Prudential was made aware of the Hydro project?

Mr. Johnson: Yes. I am sorry, I will qualify that. The first meeting at which we ~~were made~~ made them aware of the Hydro project. I don't think they knew of it before.

Mr. Shibley: You don't think they were what?

Mr. Johnson: I don't think they knew of it before.

Mr. Chairman: That was the first meeting ^{at which} ~~Mr. Johnson~~ Johnson made them aware of it.

Sept. 6, 1973
11.55-12.00 a.m.
M.F.

H - 2171 - 3

Mr. Shibley: But I thought your answer was you didn't — from the content of that meeting did it appear that they had been aware of this transaction from any other source?

Mr. Johnson: No.

Mr. Shibley: You appear^{ed} to be introducing the transaction to Prudential?

Mr. Johnson: That's correct.

Mr. Shibley: And as far as Ames is concerned, is it still your view that your firm, and your firm along, introduced this transaction to ~~the~~ Canada Square — I am sorry — is it still your position that Ames, and Ames alone, established communication between the Prudential and Canada Square?

Mr. Johnson: Yes.

Mr. Shibley: Then if we may go to the next document, September -----

Mr. Renwick: Mr. Shibley, may I ask what was the point of that last question?

~~Mr. Shibley: The point of the last question was that so far as~~

Tape H - 2172 follows

Mr. Shibley: The point of the last question was that so far as Ames are concerned they, and they alone, introduced Canada Square to the Prudential or the Prudential to Canada Square.

Mr. Renwick: Because of the reference that had been earlier made, I think, by Mr. Moog that it may have been through Equitable?

Mr. Shibley: No, I think the relevance will become apparent later on. It goes with a couple of questions.

Mr. Renwick: Thank you.

Mr. Shibley: Then on ^a September 29, 1972 document, "a call from Lynn". That's Lynn Goth who is the president of Ames in New York. Is that correct?

Mr. Johnson: That's correct.

Mr. Shibley: And he's reporting back to you certain information. Would you go through that with us please?

Mr. Johnson: This is ^a note of a phone call he'd received from Prudential, saying that they had an interest [^] and the basic terms would be those set forth here. The question about the legality of the transaction, the investment legality of it, excuse me, ^{that it} was going to be one in which they could invest their funds.

Mr. Shibley: As a life company?

Mr. Johnson: Excuse me?

Mr. Shibley: Would it be ^a legal for a life company?

Mr. Johnson: That's correct, for them in particular.

If the credit was unquestionable they would like it guaranteed by the province, ^{that} ~~if~~ their rate was eight per cent ^{that} they wanted a 15-year ~~1~~.

Mr. Shibley: Before you pass on, Again, I notice the rate is put opposite the guarantee by the province. Are we into a situation where the rate ^a again is being related to the fact that a provincial guarantee was being provided?

Sep. 6/73
12.00 to 12.05 pm
fvk

Mr. Johnson: First ^{of} ~~that~~ all, I believe my recollection of the meeting with Prudential was ~~that~~ that there would not be a provincial guarantee. They came back and said they wanted the loan guaranteed by the province and their reason for it was that they had no criteria against which to judge the credit of Ontario Hydro.

Mr. Shibley: I see, all right. Would you carry on, please?

Mr. Johnson: They wanted a 15-year non-call protection. They wanted a half of one per cent ^{per annum} commitment fee payable. They wanted to get their funds invested as soon as possible and the next item is a couple of suggestions of theirs as to how to get this money invested before the building was completed. They suggested possibly it could be lent to them against a letter of credit from a chartered bank in Canada or, conversely, could be lent directly to Hydro, or invested in short-term Hydro notes.

Mr. Shibley: Just before you go on, to your knowledge ^d or in terms of your own information, was that type of thinking ever implemented?

Mr. Johnson: No.

Mr. Shibley: And so far as the ultimate arrangement is concerned, do you know, or have any information as to any arrangement respecting the use of those funds during the period when the final completion loan is advanced?

Mr. Johnson: All I can refer you to, Mr. Shibley, is their commitment letter dated December 21₉ which says that delivery is scheduled in 1975. To the best of my knowledge the funds will remain in the possession of Prudential Insurance until that time.

Mr. Shibley: That's all I wanted to know. I'm only concerned that the suggestion that Hydro might take up some of the money by issuing short-term notes was never implemented to the best of your knowledge or information?

Mr. Johnson: No.

Sep. 6/73
12.00 to 12.05 pm
fvk

Mr. Bullbrook: May I ask, was the alternative of
a construction loan rather than a completion loan ever contemplated?
That is, draws during the course of construction^{uction} rather than ~~by~~

Mr. Johnson: I think it was turned down rather rapidly.
The financing was being done on the credit of Ontario Hydro or
the Province of Ontario and there ^{was} ~~was~~ just no way to set up a
construction loan that way.

Mr. Bullbrook: Until you had occupancy?

Mr. Johnson: That's correct, until possession of the
building.

Mr. Shibley: The next, item six.

Mr. Johnson: At the time we were there we suggested *that*
someone else may have an interest in this transaction.

(Tape H-2173 follows)

September 6, 1973
12.05 - 12.10 p.m.
M.R.

(Mr. Johnson)

~~At the time we were there we suggested that someone else~~
~~may have an interest in this transaction~~ and they were
commenting that they would take the whole loan. They would
prefer to take it all. They would let Mutual Benefit take
\$10 million of it but that's it. They would want the balance
of the loan themselves. They had no withholding tax problems.
And point eight is that there was no point in Mr. Moog going
down to see them but they would like to see the contracts.

Mr. Shibley: Did you communicate this information
in turn to Mr. Moog as indicated at the bottom?

Mr. Johnson: The day before by the looks of it.

Mr. Shibley: Yes.

Mr. Johnson: Yes I did.

Mr. Shibley: In fact, I think you told me that you
think the whole of this happened on the 28th ...

Mr. Johnson: That's right.

Mr. Shibley: ...and that you made your notes on
the 29th. Is that correct?

Mr. Johnson: That is correct. That's my recollection.

Mr. Shibley: All right. Now then, the next series ² on
the next page there ^{is} some calculations I won't bother you
with. You made a second trip to New York on October 4 ...

Mr. Johnson: Right.

Mr. Shibley: ...and that had to do with the Prudential.
Is that correct?

Mr. Johnson: That is correct.

Mr. Shibley: Now, our information is that it was at
the meeting of October 4 that the rate was set at eight per cent.
Is that correct? Perhaps I should wait until we get to another
document but that's come from other sources.

Mr. Johnson: Well, I question that the rate was
set at eight per cent until the investment committee of
Prudential had approved the loan. I think discussions were held
at a rate of eight per cent at that meeting, yes.

September 6, 1973
12.05 - 12.10 p.m.
M.R.

Mr. Shibley: Mr. Bradshaw was at that meeting?

Mr. Johnson: Yes, he was.

Mr. Shibley: He gave October 4 as the date on which the rate was set at eight per cent, that Prudential said was the rock bottom...

Mr. Johnson: Yes, that is correct.

Mr. Shibley: Right.

Mr. Finlayson: Didn't he say it ...

Mr. Shibley: I'm sorry.

Mr. Finlayson: Didn't he say it would be eight or eight and a quarter or something like that?

Mr. Shibley: All right.

Mr. Finlayson: I take it when you are making an offer *it pretty well means eight.*

Mr. Shibley: Well, coming back, Mr. Johnson ...

Mr. Finlayson: ~~Assuming~~ I'm just assuming that they got all the rock bottom guarantees that they required.

Mr. Shibley: Right. Well, Mr. Johnson, just to clear that up: At that meeting, it was made clear by the Prudential that a rate of not less than eight per cent would be stipulated for by the Prudential?

Mr. Johnson: That's correct.

Mr. Shibley: And the discussions that ensued throughout October with the Prudential in respect of this financing were all predicated on the rate being not less than eight per cent.

Mr. Johnson: That is correct.

Mr. Shibley: All right. The next document is a draft of a commission agreement. Is this an in-house document?

Mr. Johnson: Yes.

Mr. Shibley: And the last paragraph—paragraph eight is a stipulation for payment of a commission of 0.4 per cent, payable half on delivery of the commitment and half on delivery of funds. That was your idea of what was an appropriate fee for this transaction. Is that correct?

September 6, 1973
12.05 - 12.10 p.m.
M.R.

Mr. Johnson: Yes. That was the ~~person~~ thinking at that time.

Mr. Shibley: Then the next letter—again it is an October 5th letter. I notice you are still talking in the first paragraph—"We understand the financing required for this project will be approximately \$50 million."

Now, then, was it your continuing understanding as late as this date that the amount of the funding would be that large?

Mr. Johnson: I think our thinking at that time was that we didn't want to have Prudential commit in an amount lower than the possible amount and therefore we were talking ~~the~~ \$50 million.

Mr. Shibley: Right. But was that because the amount that would be ~~required~~ might be required would be as much as \$50 million?

Mr. Johnson: That was my understanding.

Mr. Shibley: Yes. And on the bottom of the page it says, "Such lease to be guaranteed by the Province of Ontario", I'm just reading the very last line on that page. You will also enter into a lease or an agreement to lease the building with Ontario Hydro, "such lease to be guaranteed by the Province and to provide for productional instances against fluctuation in exchange rates."

Now was that information provided to you by Mr. Moog?

Mr. Johnson: No.

Mr. Shibley: And continuing to be your understanding of the transaction as at October 5?

Mr. Johnson: No. That was information that was being prepared to meet the request of Prudential.

Mr. Shibley: To meet the request ...

Mr. Johnson: That was to meet the request of Prudential.

Mr. Shibley: I see. Did Mr. Moog understand that the Prudential was stipulating for a Provincial Guarantee?

September 6, 1973
12.05 - 12.10 p.m.
M.R.

Mr. Johnson: Yes.

Mr. Shibley: And that the exchange risk be for
the account of Hydro?

Mr. Johnson: Yes.

H-2174 to follow

Sept. 6/73
12:10 - 12:15 pm.
M.S.

(Mr. Shibley)

~~and that the exchange risk be for the account of Hydro?~~

~~Mr. Johnson: Yes.~~

Mr. Shibley: Now, the next document is handwritten notes; October 4 is the date I've given it. *Am I right?* *these*
next two pages are notes of your meeting in New York with Prudential?

Mr. Johnson: In Newark, yes.

Mr. Shibley: Newark, thank you. And Fred Berber is with the Prudential. Is that correct?

Mr. Johnson: Yes.

Mr. Shibley: Was Mr. Moog there?

Mr. Johnson: No.

Mr. Shibley: Who attended this meeting?

Mr. Johnson: Mr. Coles, Mr. Bradshaw, myself,

Mr. Goth and several people from Prudential.

Mr. Shibley: And the \$50 million at \$1.01 - what's the \$1.01? It's been suggested it may have been the exchange rate.

Mr. Johnson: Oh, well, I believe that was the current exchange rate.

Mr. Shibley: And then on the next page, there's indication as to certain names of personnel within the Blaine firm here in Toronto. Would you tell us about that, please?

Mr. Johnson: The only reason they were there were people who had worked ~~was~~ on Prudential's behalf in Canada before.

Mr. Shibley: Do I take it that as of October 4 matters had reached a point with the Prudential that they were now considering who to select as their counsel to effect the transaction on their behalf?

Mr. Johnson: No, I don't believe so.

Mr. Shibley: Well, how far along had they got at this point?

Sept. 6/73
12:10 - 12:15 pm.
M.S.

Mr. Johnson: That was still very, very early discussion, at that meeting.

Mr. Shibley: I see. In any event, the documentation for the transaction between Hydro and Canada Square was going forward in October. I'm wondering when, within the period we are now entering into ~~from~~ October 4 on ~~did~~ the Prudential indicate that it was going to be the institution to provide this funding?

Mr. Johnson: I would think it would be, by my letter of November 8 to Mr. Moog, it would have been very close to that time.

Mr. Shibley: Well, wasn't there any earlier indication to that effect? I might tell you Mr. Moog had said that, yes, as from October 4 onwards he expected the financing with Prudential.

Mr. Johnson: Provided that a satisfactory arrangement could be worked out with everybody, they were interested. But there was no commitment on their part to provide money at that time.

Mr. Shibley: What was happening in terms of yourself and the Prudential during October? There seems to be a lack of documentation. I'm not ~~infering~~ anything other than there is nothing from October 4 to October 30. And I must say I took it that matters were pretty well set up as of October 4, and there wasn't any need for a communication in the interval.

Mr. Johnson: I think there's probably a significant number of items in my file that aren't in here.

Mr. Shibley: I'm sorry, that ~~isn't~~ isn't -- we went through the file and these two documents are exactly in the sequence.

Mr. Johnson: Excuse me. There's a number of sheets that are not in this file, and they're information which Prudential were looking for ~~and~~ with which to assess their risk

Sept. 6/73
12:10 - 12:15 pm.
M.S.

(Mr. Johnson)

and therefore decide whether they wanted to make the loan or not.

Mr. Shibley: Oh, I'm sorry. Yes, I see.

Mr. Johnson: They are just statistics on Ontario Hydro, really.

Mr. Shibley: Well, then, the next document is October 30, '72. And I ask you to note around mid-page, "No guarantee by province." Now, from whom was this information being obtained?

Mr. Johnson: Well, I think this is some notes I made for my own file, just ¹⁶summarized the position at that point. I don't know where that information came from.

Mr. Shibley: Just ~~has~~ ahead of that you've got net rentable area, annual rent per square foot is \$3.24 Canadian. Maximum set by Hydro is \$3.35.¹ Can we take it now that this figure of ~~\$3.24~~ \$3.24 is the amount that would fund \$45 million at eight per cent, amortized over 30 years?

Mr. Johnson: On an annual basis, yes.

Mr. Shibley: And you say "maximum set by Hydro, \$3.35.¹ Would that maximum be.....



Tape H 2175 follows

(Mr. Shibley)

~~Mr. Johnson: The only relevance I think there is that this loan would then fall within the ambit of the requirement set by or the maximum set by Hydro.~~

significant in terms of enabling Mr. Moog either to borrow more money or borrow the same amount at a higher rate?

Mr. Johnson: The only relevance I think there is that this loan would then fall within the ambit of the requirement ~~set by~~ or the maximum set by Hydro.

Mr. Shibley: So there was an 11 ~~cent~~ spread there within which ~~the spread~~

Mr. Johnson: Yes, there appeared to be.

Mr. Shibley: Now then, no guarantee by the province. You say you don't know the source of this information? Was October 30 the first date on which you became aware that the province would not ~~provide~~ provide a guarantee?

Mr. Johnson: I just don't know.

Mr. Shibley: You don't know?

Mr. Johnson: It is the first time I recorded it in my notes, but I don't know when I first became aware of it.

Mr. Shibley: Was that a circumstance that raised any difficulties with respect to the financing?

Mr. Johnson: Yes.

Mr. Shibley: Would you please outline that to us.

Mr. Johnson: Well, Ontario Hydro is a credit that ~~Prudential~~ found very difficult to assess because there was nothing to compare it to. Historically, financing done by Ontario Hydro in the ~~New York~~ United States markets has been done in the name of the province of Ontario and they were therefore having problems. They ~~are~~ also found in investigating the legalities, that the Act setting up Ontario Hydro provided that they could not be sued without the permission of the Attorney General. They were a little concerned about what action they could take in the event of default.

Mr. Shibley: Right, and this led to the further consideration of the obligation to get ~~a~~ consent to sue Hydro. Is that right?

Mr. Johnson: I am sorry, would you repeat that please?

Mr. Shibley: This led to the further consideration, not only as to its credit, but also as to the ability to bring ~~some~~ action against Hydro without the consent of the Attorney General.

Mr. Johnson: That is correct.

Mr. Shibley: So two problems now arose out of this circumstance of no guarantee. One was the credit rating of Hydro. Is that correct?

Mr. Johnson: Well, the ability to assess the credit of Hydro I think is better than the credit ~~and~~ rating.

Mr. Shibley: Well, that is what we are talking about. And secondly, this problem of the ability to sue being restricted by a requirement that the consent of the A.G. be obtained.[?]

Mr. Johnson: Yes.

Mr. Shibley: All right. Now then, how were these two problems resolved?

Mr. Johnson: The first one was resolved by Prudential taking a decision that they were able, after getting significant information to assess the credit of Ontario Hydro and the second one by them accepting the fact that the risks involved in having to sue Hydro would be so minimal that they would accept ~~them~~.

Mr. Shibley: Now dealing with the first, you said, "having received significant information," what information did they ~~to~~ receive and from whom?

Mr. Johnson: Ten years of fiscal year books and so on, from Ames.

Mr. Shibley: Are you aware of the purpose ~~and~~^{and} content of communications made by Mr. Houser with the London Life Insurance Company on November 6 and November 13, 1972, referable to the financing for this building?

Mr. Johnson: No. I have never heard of it.

Sept. 6/73
12:15-12:20 pm
PLG

Mr. Shibley: You never heard ~~about~~ of it?

Mr. Johnson: No.

Mr. Shibley: All right. With respect, whatever Mr. Houser was doing in connection^N with London Life would be completely independent of anything you ~~was~~ were doing with the Prudential. Is that correct?

Mr. Johnson: Yes.

Mr. Shibley: Well then, the next set of documents sets forth certain sections of ~~the~~ the Act and I gather that again relates to this problem to sue, but on October 31, there is a further memo of Moog-Ben Holloway. He is with Equitable, is he not?

Mr. Johnson: I understand so. I don't know.

Mr. Shibley: And is this information related to you by Mr. Moog?

Mr. Johnson: Yes.

Mr. Shibley: Was he then telling you that he was once again looking at Equitable and a consortium of ~~Midwestern~~ Midwestern companies to fund this building?

Mr. Johnson: I think he was then trying to apply a little pressure to get Prudential's commitment.

Mr. Shibley: Did this again relate to any change of posture on the part of the Prudential because of the knowledge now that the ~~provincial~~ provincial guarantee *was not to be forthcoming?*

Tape H 2176 follows

H - 2176 - 1

~~(Mr. Shibley)~~

~~pressure on the part of the Prudential because of the knowledge
now that the company's counsel was not to be forthcoming.~~

Mr. Johnson: No.

Mr. Shibley: It is unrelated?

Mr. Johnson: I believe so.

Mr. Shibley: You say you think it was just a method of his bringing pressure to bear on getting a commitment from the Prudential?

Mr. Johnson: Yes

Mr. Shibley: Now, then, the next document again starts "Fred Ferber" - ~~~~~~~~~ I think you told me you made these notes the beginning of November?

Mr. Johnson: I believe so.

Mr. Shibley: "And talked to Charles" - that is Ray Charles with the Prudential, is that correct?

Mr. Johnson: That's correct.

Mr. Shibley: And Don Schenk is their general counsel?

Mr. Johnson: That's correct.

Mr. Shibley: And then down below "company policy must check". What's that about?

Mr. Johnson: Well, their company policy is that they must check three legal points which I didn't know.

Mr. Shibley: I see. Can you tell us what the word is that is struck in that line? "Worked something"? You can't help us?

Mr. Johnson: No.

Mr. Shibley: Now, you have indicated at the bottom part of that page ~~as~~ ^{that} it relates to comments wholly unrelated to this transaction. You have told me that?

Mr. Johnson: That's correct.

Mr. Shibley: So we needn't deal with that. I would like to go to the next page - November 3 - again there is

H - 2176 - 2

(Mr. Shibley)

reference to this problem of the right to sue and so on.
At the bottom it says: "7.5 per cent - Western". Would you
please tell us what that is intended to indicate?

Mr. Johnson: I have no idea.

Mr. Shibley: You can't help us at all as to that?

Mr. Johnson: I can't, I'm sorry. It probably is
unrelated but I don't know.

Mr. Shibley: All right. Then we have the commitment
letter of November 8. This is a ~~receding~~ ^{reporting} letter from your firm
to Canada Square reporting on the offering that you made and that
had been approved subject to the finance committee approval and
documentation. I don't think we need to go into that with you.

The next document again is November 8. Again there
seems to be a perpetuation of the concern on November 8th about
your inability to sue without consent. Are these notes of a
discussion with Fred Ferber?

Mr. Johnson: This would be a phone call; this would
be ~~notes~~ of a phone call.

Mr. Shibley: Yes. And I see it says "accept credit".
By this time the Prudential was accepting the credit of Ontario
Hydro?

Mr. Johnson: Right.

Mr. Shibley: But they were still concerned about the
inability to sue without consent?

Mr. Johnson: I believe so, although at some point they
made a decision that they would accept it on that basis. That
may have been about that time.

Mr. Shibley: All right. Then your next document sets out
calculations or a rationale for your fee of \$180,000. Is that
correct?

Mr. Johnson: That's correct.

Mr. Shibley: And the next document seems to be a

Sept. 6, 1973
12.20-12.25 p.m.
M.F.

H - 2176 - 3

(Mr. Shibley)

document which helps solve the second problem wherein you say to the Prudential "enclosi^{ng} the Globe clipping; Ontario Hydro to become a Crown corporation and help to take the status of Ontario Hydro out of limbo".

Did this, in fact, solve the second problem referable to the ^{limitations}~~communications~~ on the right to sue?

Mr. Johnson: No, that had been solved prior to that.

Mr. Shibley: Well, what did you mean when you said "this should help to take the status of Ontario Hydro out of limbo"?

Mr. Johnson: Well, their legal advice was that they couldn't quite understand what Ontario Hydro was. It was an agency of the provincial government apparently but it wasn't a Crown corporation.

~~Mr. Shibley: I see. Well did this help return them to their~~

Tape H - 2177 follows

Sep. 6/73
12.25 to 12.30 pm
fvk

~~(Mr. Johnson)~~

~~... agency of the provincial government, apparently, but it
wasn't a Crown corporation.~~

Mr. Shibley: I see. Did this help return them to their ^{earlier} ~~former~~ thinking as of October 4 in terms of the credit as well as other circumstances that were impinging on their making this ~~some~~ loan?

Mr. Johnson: No, they had agreed at that point because I had a report on November 8.

Mr. Shibley: Subject to the finance committee.

Mr. Johnson: That's correct.

Mr. Shibley: Then the next letter is your letter of November 17. Was there a meeting with Mr. Moog referable to arrangements for compensating your firm?

Mr. Johnson: Yes.

Mr. Shibley: Would you please tell the committee how the terms and ~~the~~ form of the letter of November 17 came about?

Mr. Johnson: I had some phone conversations, I can't recall how many, with Mr. Moog to attempt to now settle our fee. I think I'd reached an impasse in terms of what I thought we should be compensated and what he felt we should be compensated and, as a result, Mr. Bellamy and myself met with Mr. Moog and Mr. Coles sometime during the week of November 17. I can't be specific ^{to} ~~the~~ ~~date~~.

Mr. Shibley: Is there some reason for the reduction of the fee from \$180,000 as you contemplated to \$100,000?

Mr. Johnson: That was the deal we negotiated.

Mr. Shibley: This document represents the whole of the arrangements between Ames and ~~and~~ Canada Square providing compensation for your efforts in arranging the Prudential funding. Is that right?

Mr. Johnson: Yes.

Mr. Shibley: Were you happy with the solution, Mr. Johnson?

Mr. Johnson: WE accepted the solution.

Sep. 6/73
12.25 to 12.30 pm
fvk

Mr. Shibley: I won't pursue it further. The next document is December 4 and it's a ~~telex~~, exchange of ~~telexes~~. Would you explain that please?

Mr. Johnson: Prudential had asked for additional statistical information on Ontario Hydro and in an effort to ~~give~~ ^{get} as quickly as ~~and~~ possible I had asked Paul Fisher of our firm if he would call someone at the Hydro that he knew to get the name of the proper person for me to get the information from. He's just reporting to me that would I happen to be in Montreal one day, his contact was not there, they had gone to New York to price a Province of Ontario issue in New York and I reported back and said: "Fine". He would be back in mid-week, and I couldn't see any reason to bother him down there.

Mr. Shibley: What I'm wondering about ^{was} ~~the~~ the finance committee of Prudential still relating the rate to the rate of the Ontario issue?

Mr. Johnson: The Ontario issue hadn't been done. There was no rate on the Ontario ~~is~~ issue.

Mr. Shibley: What I want to know is, you see, this now is in the hands of the finance committee?

Mr. Johnson: No, not yet.

Mr. Shibley: Well, it's about to be.

Mr. Johnson: The finance committee is a ~~one~~ half an hour transaction.

Mr. Shibley: What I'm driving at is this, ^{I'm wondering} ~~the telex~~ if this ~~telex~~ Telex indicates, and correct me if I'm wrong because I may be, in their thinking ~~that~~ they're still relating rate to the Province of Ontario rate?

Mr. Johnson: The rate had been set subject to the finance committee approval.

Mr. Shibley: Then that approval was forthcoming by decision of the committee on the ~~twelfth~~ twelfth and communicated by letter to you of December 21. Is that right?

Mr. Johnson: Right.

Mr. Shibley: Had you received word earlier ~~that~~ than

(Mr. Shibley)

December ¹~~11~~ that the finance committee had approved of this?Mr. Johnson: Earlier than December 21?Mr. Shibley: Yes.Mr. Johnson: Yes.Mr. Shibley: When was that?Mr. Johnson: December 12.Mr. Shibley: You had heard on the twelfth?Mr. Johnson: Yes.

Mr. Shibley: With respect to ^{the} November 8 letter had you heard, prior to November 8, that the investment committee had approved the loan~~g~~, subject to the finance committee approval?

Mr. Johnson: I don't know if they have an investment committee.

Mr. Shibley: Well, it says here—I'm sorry, I'm back to ^{the} November 8 letter. "Subject to the completion of satisfactory document and approval of the investment committee, Prudential have agreed to provide financing." Do you see that? In the November 8 letter.

~~Mr. Johnson: Yes.~~~~Mr. Shibley: Now, had you heard prior~~

(Tape H-2178 follows)

September 6, 1973
12.30 - 12.35 p.m.
M.R.

(Mr. Shibley)

Mr. Johnson: Yes.

Mr. Shibley: Now, had you heard prior to November 8 that Prudential had agreed to provide financing for the project?

Mr. Johnson: No.

Mr. Shibley: When was the first notification to you?

Mr. Johnson: I would have to expect it was virtually coincidental with that November 8 letter.

Mr. Shibley: And did you, in turn, communicate that fact to Mr. Moog?

Mr. Johnson: Yes. I wrote him a letter.

Mr. Shibley: Yes. You wouldn't delay in telling him *that*?

Mr. Johnson: I don't believe so.

Mr. Shibley: With respect to the commitment letter of December 21, did you subsequently have conversation with the Prudential as to its binding effect?

Mr. Johnson: No, it was prior to that.

Mr. Shibley: Prior to that? And would you please tell the committee the view that was expressed to you in that regard?

Mr. Johnson: When I asked Mr. Ferby in a telephone conversation he reports on December 12 ~~that~~ how binding that commitment was he said that their board of directors considered they could be sued on the strength of that commitment.

Mr. Shibley: Yes. And did you relay that information to Mr. Moog?

Mr. Johnson: I'm sure I must have.

Mr. Shibley: At that time?

Mr. Johnson: I would think so.

Mr. Shibley: So that as of ~~December 12, 1972~~

December 12, 1972, Mr. Moog knew that the view of the board of directors ~~was~~

September 6, 1973
12.30 - 12.35 p.m.
M.R.

Mr. Finlayson: No. No. No. It's Ferber reporting.

Mr. Shibley: Well, Mr. Ferber is reporting - didn't you say it was the view of the board, Mr. ~~Johnson~~ Johnson?

Mr. Johnson: He reported that.

Mr. Shibley: Yes. Mr. Ferber was reporting that it was the view of the board of directors of the Prudential that they could be sued on that commitment. Now, did you also have communication with the Prudential following receipt of the letter asking for your attendance before this committee around mid-July?

Mr. Johnson: Excuse me - did I have communication?

Mr. Shibley: Or anyone in your firm?

Mr. Johnson: Did I have communication - excuse me?

Mr. Shibley: With the Prudential?

Mr. Johnson: Prior to²

Mr. Shibley: When you were asked to attend before this committee, you got a letter from the clerk?

Mr. Johnson: Right.

Mr. Shibley: Around mid-July?

Mr. Johnson: Right.

Mr. Shibley: And was there communication between your firm and the Prudential referable to the disclosure of their identity to this committee?

Mr. Johnson: I understand there was, yes.

Mr. Shibley: And did they tell you at that time that they had no objection to being disclosed as the entity providing permanent financing?

Mr. Johnson: I understand so.

Mr. Shibley: And did you also communicate that fact to Mr. Moog at that time?

Mr. Johnson: No.

Mr. Shibley: You did not?

Mr. Johnson: Not to the best of my knowledge - I didn't know about it myself.

September 6, 1973
12.30 - 12.35 p.m.
M.R.

Mr. Shibley: I see. Well, did anybody in your firm communicate it to Mr. Moog?

Mr. Johnson: Not to my knowledge.

Mr. Shibley: Were you aware of the posture ~~of~~ taken by Mr. Moog before this committee, from the press or ~~reach~~ otherwise, in that connection?

Mr. Johnson: Yes ~~from~~ from the press.

Mr. Shibley: Yes. And you nevertheless made no communication with him?

Mr. Johnson: I didn't know it, Mr. Shibley.

Mr. Shibley: Well, who did know of it in your firm?

Mr. Johnson: I understand it was one of our very senior officers.

Mr. Shibley: I see. And he never mentioned it to you?

Mr. Johnson: No, he did not.

Mr. Shibley: I see. But you had told Mr. Moog that the commitment was considered sufficiently binding that ~~that~~ he could sue on it?

Mr. Johnson: Yes.

Mr. Shibley: Then the next two documents are ~~documents~~ one is a draft and the other is the final document.

I'm only interested in the one item. On Page two of the final document there is a conversion of what had been the equivalent of \$45 million Canadian to a straight \$45 million U.S. dollar loan. Was there some reasoning behind that?

Mr. Johnson: Prudential were unable to commit in Canadian dollars, And therefore they had to make their commitment in a definitive amount and they committed then in U.S. dollars.

Mr. Shibley: Now you have nothing to do with the last document in this file but I would like to ask you about another exhibit. Excuse me just a moment.

Mr. Chairman: Mr. Johnson, just by way of satisfying my own curiosity and nothing really too much to do with this matter,

September 6, 1973
12.30 - 12.35 p.m.
M.R.

(Mr. Chairman)

what is the reason that the Swiss government puts the
restrictions on the ³ number?

Mr. Johnson: I don't know.

Mr. Chairman: ^{To} ~~Did you~~ say "to one entity in any
three year period." How do they distinguish between one
government in Canada and another government in Canada?
Do you know?

~~Mr. Johnson: I'm sorry, my knowledge of this
is entirely what Mr. Drachman told me. I haven't
pursued it.~~

H-2179 to follow

Sept. 6/73
12:35 - 12:40 pm.
M.S.

~~Mr. Johnson: I'm sorry. My knowledge of it is almost entirely what Mr. Bradshaw told me. I haven't pursued it, except in a very casual way. I do understand that their exchange control regulations prohibit this.~~

Mr. Johnson: I'm sorry. My knowledge of it is almost entirely what Mr. Bradshaw told me. I haven't pursued it, except in a very casual way. ~~I~~ I do understand that their exchange control regulations prohibit this.

Mr. Chairman: Therefore, it is a Swiss federal law, rather than a bankers' agreement?

Mr. Johnson: Yes, that's my understanding.

Mr. Renwick: Mr. Chairman, I just have a question for Mr. Johnson, if I may.

Mr. Chairman: Mr. Renwick?

Mr. Renwick: From October 23, '72, when the Province of Ontario guarantee disappeared, or the possibility of it disappeared, through until the commitment from Prudential, how would you assess the problem that that created with Prudential? Was it a difficult problem, or was it one which, on examination, they were quite ~~well~~ prepared to go without it?

Mr. Johnson: I think after they had had an opportunity to assess Ontario Hydro, they were ~~un~~prepared to go without it.

Mr. Renwick: Presumably on the proposition that Hydro was not going to either go into default ~~itself~~, or be allowed to go into default?

Mr. Johnson: That's right. They looked at the fact ~~that~~

Mr. Renwick: For practical purposes.

Mr. Johnson: ~~that~~ that Ontario Hydro has, I guess, the obligation, really, to assess the municipal utilities for any deficiencies that they may have. ~~And~~ I think after looking at the legislation they decided to ~~do~~

Sept. 6/73
12:35 - 12:40 pm.
M.S.

Mr. Renwick: They would have the same view that we would have, that it's equivalent to a Province of Ontario covenant? Give or take.

Mr. Johnson: Effectively, yes. Give or take something, yes.

Mr. Shibley: Mr. Johnson, I'm producing to you a sheet of notes elicited from the files of Canada Square, not your file. And you'll notice towards the bottom of the page the names Lynn Goth, Ferber and Ray Charles. Can you identify those persons for me, please?

Mr. Johnson: Well, Lynn Goth is president of A.E. Ames ^{and} Company Incorporated, which is our subsidiary operating in New York. Mr. Ferber is vice-president, bonds, of the Prudential Insurance Company. And Ray Charles, I believe, is senior vice-president, investments, of the same company.

Mr. Shibley: Now, looking -- and you've already said ~~the~~ that you brought about the communications with the Prudential, and that these were post-July 25th, 1972, and that your view is that your firm and your firm alone brought the Prudential and Canada Square together. Is that correct?

Mr. Johnson: Yes.

Mr. Shibley: Now, this document is undated, but I notice it has 23-27 November as part of it. I'm wondering if you can help us at all, by looking at the information outlined on this document, as to when it was prepared and whether this was information which was taken up with Mr. ~~Robert~~ ^{Lynn} Goth, Mr. Ferber and Mr. Charles?

Mr. Johnson: I can't make ^{much} out of the document, Mr. Shibley, I must admit.

Mr. Shibley: Do any of those calculations or figures make any sense to you? Can you interpret them for us?

↓ (Tape H 2180 follows)

Sept. 6/73
12:40-12:45 pm
PLG

(Mr. Shibley)

~~can you interpret this for us?~~

Mr. Johnson: Afraid not.

Mr. Shibley: Did you ever talk to the Prudential or did Mr. Lynn Goth ever talk to the Prudential in terms of funding of \$20 million Swiss and \$30 million additional dollars?

Mr. Johnson: I don't believe so.

Mr. Shibley: Does the 6 1/8 to 8 1/8 mean anything to you?

Mr. Johnson: No.

Mr. Shibley: You can't help us then with respect to this document? Again I am concerned to clean something up here and that is ~~the timing~~ the timing of this document.

Mr. Finlayson: What is the timing of the document, Mr. Shibley? You tried this on Mr. Moog and he couldn't tell you when he ^{had} made the scribbles, but he did point out to you that the whole section in the middle seemed to deal with buying some equipment that he wanted for his racing yacht and that it wasn't all related to the same subject.

Mr. Shibley: I realize that, Mr. Finlayson. It is just that the one page contains information--it contains the names of certain people in the Prudential and Ames and ~~also~~ also information that with figures that seem awfully familiar

Mr. Finlayson: They also contain some figures ~~that~~ that don't mean a thing to me. What ~~do~~ does the five to seven years mean?

Mr. Shibley: Well, the difficulty is that Mr. Moog with the benefit of, he having made the whole of these notations, gave no explanation at all for the document. I was hoping that what with the name of...

Mr. Finlayson: He said he was unable to give it.

Mr. Shibley: Well, all right. He was unable to, but I was hoping that with the name of Lynn Goth, of Ames on here and of other people that Mr. Johnson might be able to give us some

(Mr. Shibley)

assistance.

Mr. Finlayson: He apparently can't.

Mr. Shibley: No idea?

Mr. Chairman: All three of those names, do they operate out of the New York office?

Mr. Johnson: I assume the first name is Mr. Goth's. Is that correct? I can't read it.

Mr. Shibley: It is Lynn Goth. I am sorry. Goth. You are right. Lynn Goth.

Mr. Johnson: Is that ~~what~~ what it is?

Mr. Shibley: It looks like it to me.

Mr. Johnson: Well, to be fair, Mr. Shibley, I am in some doubt about that first name. I thought it might be Mr. Goth but...

Mr. Shibley: Mr. Moog, I think, identified this man as with Ames.

Mr. Finlayson: Did he? I thought you put the name to him.

Mr. Shibley: No, he said it was Ames.

Mr. Garrow: We were speculating. I was here at the time and we were speculating about what the name might be and that name came up, but it could be several other things.

Mr. Shibley: Well, I think it is in Mr. Moog's testimony that this is a gentleman with Ames.

Mr. Chairman: The other two are with...

Mr. Shibley: The Prudential.

Mr. Johnson: Prudential.

Mr. Chairman: From New York.

Mr. Johnson: Yes.

Mr. Shibley: All right. Well if you can't help us, I have no further questions of this witness Mr. Chairman.

Mr. Chairman: Have any of the members further questions of Mr. Johnson? Mr. Newman.

Mr. W. Newman: Well Mr. Johnson, you quite obviously from the evidence ~~that he has~~ your firm set up the transaction

H 2180-3

(Mr. W. Newman)

Sept. 6/73
12:40-12:45 pm
PLG

with Prudential basically for Canada Square.

Mr. Johnson: That is correct.

Mr. W. Newman: I ~~mean~~ remember one of the exhibits or one of the letters saying that your fee was so much money. Do you feel that you ~~a~~ have got a fair and equitable fee and just fee for what you have done?

Mr. Johnson: Well, I answered that before we accepted it.

Mr. Chairman: Any further questions? ~~and~~ Thank you very much, Mr. Johnson, for your help to the committee. If you could stay here for 10 minutes or so, Mr. Shibley has Mr. Bellamy.

Mr. Shibley: I'd like to deal with him. I won't be more than...

Mr. ~~Shibley~~ Chairman: I suppose maybe something might come out of Mr. Bellamy's evidence that you might help clarify.

Mr. Shibley: Would you come forward Mr. Bellamy. There is just one document I want to deal with Mr. Bellamy on.

Mr. Genest: Mr. Shibley.

Mr. Shibley: Yes.

Mr. Genest: I have got some information for you dealing with the right to sue.

Mr. Shibley: Oh yes.

Mr. Genest: You had asked me to inquire. Mr. Raney, the general counsel and Secretary of Hydro has made a complete search of all Hydro minutes and memos to file from 1971 to 1973 and you are welcome to repeat it, although I think that the committee might be disturbed if you spent that long at it. There is absolutely no reference in any of the commission documents ~~relating to the right to sue with the exception of a document~~
~~dated March 11, 1971~~

Tape H 2181 follows

Sept. 6, 1973
12.45-12.50 p.m.
M.F.

H - 2181 - 1

(Mr. Genest)

relating to the right to sue with the exception of a document dated May 31st, 1973, where the Power Commission is discussing amendments to the Power Commission Act, where a draft bill prepared by Mr. Raney recommended that that section requiring the consent of the Attorney General be deleted from the Act. There is no other discussion of the problem in any other Hydro minute or document.

Mr. Shibley: Was Mr. Gathercole connected with that in the documentation you have seen?

Mr. Genest: No. I have got the advice of Commission decision here. It is an excerpt from the minutes and it is a report on the amendments to the bill, and you are welcome to come and look at the minutes.

Mr. Chairman: Mr. Shibley is not going to sleep this weekend.

Mr. Shibley: I must confess I was speed-reading when I went through those minutes. I did the whole of them in about two hours ^(1-1/2 hours) as my memory of going through them for the relevant period ~~and~~ I can't get it out of my mind that there was something from Mr. Gathercole referable to this question. But, however, Mr. Genest, thank you for the effort.

~~Mr. Genest~~

ROBERT E. BELLAMY, Sworn

Mr. Shibley: Mr. Bellamy, you are also associated with Ames and Company, and a senior officer of that firm?

Mr. Bellamy: Yes, sir.

Mr. Shibley: ~~Was~~ I just want to take you directly to the last document in the file which is your exhibit brief, the May 14, 1973, document. Was this the only communication you had with Mr. Moog referable to this transaction?

H - 2181 - 2

Mr. Bellamy: No. I attended with Mr. Johnson at a meeting where we had considerable discussion on the fee arrangements between our two firms.

Mr. Shibley: And other than that particular discussion, did you ever participate in anything further referable to this, other than what we are about to discuss on this document?

Mr. Bellamy: No.

Mr. Shibley: Thank you. Now, then, I gather on May 14 you had a discussion with Mr. Moog. Is that correct?

Mr. Bellamy: A telephone call?

Mr. Shibley: Yes. And did he call you?

~~xxxxxxkanyxxxxxxdixkxxxxxxaixxxm?~~

Mr. Bellamy: Yes, he did.

Mr. Shibley: Would you interpret the document for ~~xxx~~ us, please?

Mr. Bellamy: It was a very short telephone ~~xxx~~ conversation. He called in Mr. Johnson's absence and spoke to me. The first - ~~those are my~~ ~~xxxxxx you might say~~ scrawlings - his first reference, was that he was expressing - he wanted a real handle with the Pru, ~~and~~ I think that I take that to mean that he was expressing an interest in tying the commitment down to the point ~~of~~ of ^(a) consummated agreement.

The next reference I take to be his response to my question "Well, what is really going on, Gerry?" and he said "There are no skeletons in the closet. It is fine, and it will all work out

The next comment is that I knew that Bill Johnson had ^(b) been in touch with the Pru. There had been some concern - I guess Mr. Moog was expressing some concern that interest rates were going up and he was once again just reinforcing concern that he wanted to push the discussions with them to try and wrap it up, expressing real urgency.

Mr. Shibley: Now then, on the bottom you have a note. What is that about? Is that part of ~~y~~ your conversation or ~~xxx~~ /

Sept. 6, 1973
12.45-12.50 p.m.
M.F.

H - 2181 - 3

Mr. Bellamy: Yes. This would be the wrap-up of the conversation. I probably indicated I would get hold of Bill Johnson and try to see what his views were because I was not intimately associated and didn't know what action we would be able to take or, indeed, what status discussions or procedures, mechanical procedures, that, Pru were in. He undoubtedly said, or emphasized, that any savings below eight per cent went to the Hydro: that he wanted to do everything possible to get the financing transaction signed and sealed, and there is some reference to a pension fund, get into the act. In subsequent discussion with Mr. Johnson, which I am leaning on more than my recollection of what was said in the telephone conversation, I believe that referred to some reference which had been made ¹⁶ ~~the~~ the possibility that the financing ~~could~~ ^{would} be taken on by the Hydro pension ~~and~~ and I think that relates to a transaction in which the Workmen's Compensation Board building ~~where the pension fund was in fact~~

Tape H - 2182 follows

September 6, 1973
12.50 - 12.55 p.m.
M.R.

(Mr. Bellamy)

~~... a transaction in which the Workmen's Compensation Board building~~ where the pension fund did in fact participate in the financing.

Mr. Shibley: Was this Mr. Moog telling you that the Hydro pension fund might be used to fund this building?

Mr. Bellamy: My memo doesn't say Hydro pension or my note doesn't say Hydro pension fund so I can not be certain. *I really* was puzzled by that note myself until I spoke to Bill Johnson which clarified it.

Mr. Shibley: But the point I'm ~~about~~ driving at, Mr. Bellamy, is: This is a note of what Mr. Moog was saying in the course of the conversation with you, is that correct?

Mr. Bellamy: Yes.

Mr. Shibley: So the reference to pension fund is a reference that Mr. Moog is making to you?

Mr. Bellamy: Yes.

Mr. Shibley: And what was the representation he made to you in that connection?

Mr. Bellamy: I can't recall. My note is very imperfect. He did make ~~some~~ reference to a pension fund.

Mr. Shibley: Yes.

Mr. Bellamy: It's all I can recall from the note.

Mr. Shibley: Well ~~that~~ it says —

Mr. Bellamy: My other comment was subsequent to that in conversation with Bill Johnson. I got a little better understanding of what ~~that~~ ^{he had} meant.

Mr. Shibley: And what is that again please?

Mr. Bellamy: Mr. Johnson ^{was} recalled to my attention, and I believe I'm correct, that in a building for the Workmen's Compensation Board ~~that~~ or a building for the Ontario government that the Workmen's Compensation Board pension fund had in fact participated in the financing.

And I can only say that this must be a reference to some pension fund or pension funds of the Ontario government

September 6, 1973
12.50 - 12.55 p.m.
M.R.

(Mr. Bellamy)

participating in the financing of this building, and this must have been in Mr. Moog's mind and he wanted to — that was another reason for him to want to try and button down the financing with Prudential as strictly as possible.

Mr. Shibley: I see. Oh, I see, that if you didn't get ^{with} on getting the Prudential money that it looked like the Hydro pension funds might be used. Is that what you are saying?

Mr. Finlayson: Well, in fairness, the witness doesn't seem to know what the note means.

Mr. Shibley: Well, Mr. Finlayson, let's hear what he says in answer, please.

Mr. Finlayson: Well, you keep putting these propositions to him. Are you hoping that one of them is going to ring a bell?

Mr. Shibley: I just want to know what representations Mr. Moog was making to Ames and Company referable to the Ontario pension fund monies being employed for this project. That's all.

Mr. Finlayson: There is nothing in that note that said Mr. Moog made any representations in the nature that you just indicated.

Mr. Shibley: Well, I want to ask the witness if you don't mind, Mr. Chairman,

Mr. Finlayson: Why don't you ask the witness what it means?

Mr. Shibley: Mr. Chairman, I don't think it helps to get this kind of interruption every time it gets a little sensitive for Mr. Moog.

Mr. Finlayson: What do you mean? Sensitive for Mr. Moog?

Mr. Shibley: I'm asking the question of the witness, Mr. Chairman, in order to understand what it was that Mr. Moog had to say to Ames and Company ...

~~Mr. Shibley~~

September 6, 1973
12.50 - 12.55 p.m.
M.R.

Mr. Chairman: If it's in no way sensitive to Mr. Moog, Mr. Finlayson—that's your only representation here is to represent Mr. Moog and Canada Square—and if it's not of importance to him then there is no reason for you interjecting at this time.

Mr. Finlayson: My objection, Mr. Chairman, is the fact that he is attempting to put words into the witness's mouth. Now the witness said that the words didn't mean a great deal to him and that ~~he~~ then ~~was~~ went and spoke to Mr. Johnson—not, I emphasize to Mr. Moog—and it was Mr. Johnson who reminded him that this might have something to do with the Workmen's Compensation Board. Now that's the witness's evidence.

Mr. Chairman: Well, Mr. Johnson is still here and we can perhaps get him back if necessary, but these are Mr. Bellamy's notes and he is ~~saying~~ ~~back~~ trying to jog his memory in connection with the last note on the page, and I think that's quite reasonable.

Mr. Bellamy: Mr. Shibley, Mr. Chairman, the last note on the page given the context—this was a very short telephone conversation—were three notes that I made of points that Mr. Moog was making in the context of being concerned and urging that we do anything possible, get rolling, try and get this financing buttoned down as tightly as possible. And out of that context the jottings don't mean very much and did not mean much to me when I tried to recall them. I cannot recall what Mr. Moog said in connection with pension fund. Subsequently, in looking at this and trying to recall in a discussion with Mr. Johnson, he made the point that there was, I believe, it was in connection with financing another Ontario government building where the Workmen's Compensation Board pension funds had participated. And that seemed to me to tie in with this.

~~Mr. Shibley: Yes, and what do you mean~~

Sept. 6/73
12:55 - 1:00 pm.
M.S.

~~Mr. Bellamy:~~

~~the Ontario government building, where Workers' Compensation Board pension funds had participated. And that seemed to me to tie in with this.~~

Mr. Shibley: What do you mean, "it seemed to tie in"? Having been afforded ~~any~~

Mr. Bellamy: It seems to tie in, sir, in the sense that he was indicating that there might be a possibility that funds would be made available from other sources for the completion of the Hydro building.

Mr. Shibley: You've heard Mr. Johnson ~~any~~

Mr. R.G. Hodgson: Before you leave that, I'd like to ask a question. Do you remember any reference to Hydro pension funds in that conversation with Mr. Moog?

Mr. Bellamy: No, I do not specifically.

Mr. R.G. Hodgson: You don't recall whether Hydro pension funds was mentioned in any way?

Mr. Bellamy: No. I regret I can't recall.

Mr. Shibley: You heard me ask Mr. Johnson about the communication between people in your firm and the Prudential in mid-July, wherein your firm was advised, I take it, that the Prudential had no objection to being disclosed as the company providing permanent financing. That is correct, is it not?

Mr. Bellamy: Yes, sir.

Mr. Shibley: So, that as early as mid-July your firm knew this. Have you any information as to whether anyone in your firm communicated that circumstance to Mr. Moog?

Mr. Bellamy: I do not have, but I would be quite satisfied that they did not.

Mr. Shibley: I see. I have no further questions, Mr. Chairman.

Mr. Chairman: Thank you very much, Mr. Bellamy and Mr. Shibley. Mr. Finlayson, do you wish us to recall Mr. Johnson,

H 2183 - 2

Sept. 6/73
12:55 - 1:00 pm.
M.S.

(Mr. Chairman)

if you wish a question put to him through me in connection with this?

Mr. Finlayson: No, I have no further comment to make on the evidence, Mr. Chairman.

The committee adjourned at 12:57 o'clock, p.m.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Assistant to committee counsel:	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square counsel.	Douglas Laidlaw, QC
	Gregory Rice
	G.D. Finlayson, QC
Horizon Development and Management Ltd. counsel :	S.L. Robins, QC
A.E. Ames and Co. Ltd. counsel:	J.W. Garrow
President, Horizon Development and Management Ltd. :	Walter Zwig
Senior underwriter, A.E. Ames and CO. Ltd. :	William Johnson
Senior officer, A.E. Ames and Co. Ltd. :	R. E. Bellamy

List of exhibits introduced during this sitting appears on the next page.

INDEX TO EXHIBITS

Exhibit	Page	Description
226	2153 - 1	File of Horizon Development and Management Limited, re Ontario Hydro Head Office Building.
227	2164 - 2	List of political contributions by Horizon Development and Management Limited.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, September 6, 1973

Afternoon session

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS.

The committee resumed at 2.25 p.m.

Mr. Chairman: Ladies and Gentlemen, I call the meeting back to order, and I understand that Mr. Houser is the next witness. I would ask you, Mr. Houser, if you would come forward to our seat of honour.

ELMORE

HOUSER, Sworn.

Mr. Shibley: Mr. Houser, you are a senior partner of the firm of Harries, Houser.

Mr. Houser: I am.

Mr. Shibley: And Mr. McCallum is also a partner of that firm.

Mr. Houser: He is.

Mr. Shibley: And I understand that you collaborated with Mr. McCallum in the documentation referable to the transaction between Canada Square and Ontario Hydro for its head office building.

Mr. Houser: I did.

Mr. Shibley: Am I correct that you came into the picture as at the end of August 1972 when Mr. McCallum went away on a short holiday?

Mr. Houser: I came into the situation at the end of August, ~~but~~ I don't recall that Mr. McCallum was going away.

Mr. Shibley: I see. In any event, I take it that you assumed responsibility for the drafting of the documents.

Mr. Houser: That is correct, with ~~the~~ discussions with Mr. McCallum as we went along.

Mr. Shibley: Yes, and that in terms of the negotiations, that was left to Mr. McCallum in large measure.

Mr. Houser: That is correct.

Mr. Shibley: Now, then, there are only two matters that I want to touch upon with you, and perhaps the clerk could give you

(Mr. Shibley)

what I call the McCallum exhibit, which is the selection of documents from Mr. McCallum's documents, being exhibit 225.

I want you to turn to the latter portion of those documents where the ~~XXXXXX~~ dockets are located, commencing October ^{ber} 23, and following. It is page 89 of the brief.

Mr. Houser: I have 89.

Mr. Shibley: Now, it is in evidence, Mr. Houser, that on or about October 23, the solicitor for Hydro, Miss West, in written communication, made it clear that the guarantee of the Province of Ontario would not be provided in connection with the Hydro transaction. It is also in evidence.....

Mr. Genest: Mr. Shibley, I think you are overstating that. I think all Miss West said, as I read her letter, was what is the authority for this?

Mr. Shibley: Well, does it really matter, Mr. Genest?

Mr. Genest: No, I don't think so, ^{I am} just interested in accuracy.

Mr. Shibley: Well, then - -

Mr. Genest: I never know what you are going to make out of it.

Mr. Chairman: We have our moments here, Mr. Houser.

Mr. Shibley: That is what I call getting gun shy.

All I was trying to do was establish a date of reference, Mr. Houser, and it is also in evidence that in memoranda of October 20 you indicated that there was to be a provincial guarantee, this is notes on the documentation. There is another memorandum of yours, I think, indicating that it was to be deleted from all the documentation, so in the period October 20 to October 23, it became clear that the guarantee was not to be part of ^{this} ~~the~~ transaction.

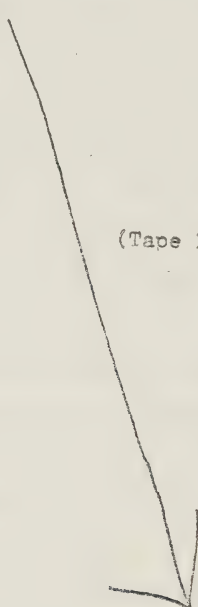
Mr. Houser: If I may, Mr. Shibley, as far as I am concerned, it became clear much earlier than that, ^{that} ~~the~~ guarantee was called in question. When the guarantee was first produced to me in the documents, I told Mr. Bradshaw and others at the meeting, that there was nothing in the material I had that indicated there was

Sept. 6/73
2.25-2.30p.m.
B.A.

(Mr. Houser)

to be any provincial guarantee whatsoever of the contract, and this took place in September. At that time, Mr. Bradshaw said, "Well, those are contrary to my instructions, Mr. Houser, and when you are re-drafting it I suggest you leave it in until we resolve the question of the guarantee". I then discussed the matter with Mr. McCallum, and he said he had no instructions either, and my information is that he informed Mr. Moog if there was to be a guarantee, would he give specific instructions for those. WE never did get those specific instructions, and on October 20th when we were going over, ~~the final drafts~~ towards the final drafts,

(Tape H-2185 follows)



(Mr. Houser)

~~did get through the Ontario Hydro and Canada Square~~
~~and the guarantee is found at the top of page 11~~
I prepared a long memorandum for Mr. McCallum and in that memorandum I said should we not delete the reference "provincial government guarantee" and at a subsequent meeting, I believe held on the 23rd, there is no question about it, it was deleted, and that was before I received Miss West's letter.

Mr. Shibley: So you are telling this committee that when you did your draft of September 15, which is exhibit 14

Mr. Houser: I am familiar with it.

Mr. Shibley: 14 one ninety-six, that I ask be produced to you, that you had already indicated to Mr. Bradshaw that you had no instructions to include such a provision and that you then went forward and included it at his instance?

Mr. Houser: That is correct.

Mr. Shibley: Now I ask you to look at the face page of that document, Mr. Houser.

Mr. Houser: Which page?

Mr. Shibley: Actually, there was a little slip of paper - I'm sorry - attached to the document, which has been reproduced on the front of it. Very first. ^{It's a} Slip of paper, A little note, and you ^{may} have difficulty reading the photocopy. It says: "Keep as evidence of Elmore's agreeing to the province's guarantee, page 11". And the guarantee is found at the top of page 11:

"The Lease shall be executed and delivered by Ontario Hydro and Canada Square by Her Majesty in the right of the Province of Ontario as guarantor of the obligations of Ontario Hydro thereunder prior to the date upon which Ontario Hydro takes ~~possession~~ possession of the building" and so on.

Are you telling me then that you included what was on the top of page 11 subsequent to your exchange with Mr.

(Mr. Shibley)

Bradshaw referable to you having had no instructions to that effect?

Mr. Houser: That would be my recollection.

Mr. Shibley: And, accordingly, when this document, this draft, was received into the hands of the Canada Square people ~~they were not~~ at least their solicitor then knew you were only included ^{ing} it because he had asked you to include it and notwithstanding that you had told him that you had no instructions to that effect?

Mr. Houser: That is correct.

Mr. Finlayson: But remember that note was found in *the* Canada Square ~~file~~ file and not in Mr. Bradshaw's file.

Mr. Shibley: Yes, exactly. Exactly.

Mr. Houser: I am not at all certain that Mr. Moog wasn't also present when we were discussing these agreements, because he was present at most of the discussions that we had.

Mr. Shibley: I see. You are talking about Mr. Moog possibly being present at the meeting ~~at~~ which you had this exchange with Mr. Bradshaw? Is that right?

Mr. Houser: That's correct, yes.

Mr. Shibley: In any event, Mr. Houser, you never did agree that the province's guarantee should be part of the documentation?

Mr. Houser: The answer to that is, I did not agree.

Mr. Shibley: I am a little distracted, Mr. Houser. Would you turn with me -- or before we do that, and in order -- no, I will start again. I have already given you some history as to the circumstances of October 20 and you say that this went back earlier in point of time as you have indicated that there was no instructions to you to provide the guarantee, why then was it left in the documents so late in point of time? I am thinking that it was still in the documentation as late as October 20.

2.30-2.40
W.H.

Mr. Houser: I think the answer to that, Mr. Shibley, is that we ^{had} informed Mr. Moog that there would be no guarantee unless he got specific instructions.

Mr. Shibley: Yes?

Mr. Houser: And we were waiting to see ^{whether} ~~whether~~ any such specific instructions came.

Mr. Shibley: Yes.

Mr. Houser: We did not get the specific instructions. When I was going over the documents prior to October 20, I had earmarked that as one thing that must be given consideration and my memorandum as of that date indicates that this is something that now must be deleted.

Mr. Shibley: Yes. Do you have any knowledge or information as to any efforts made by Mr. Moog to get a provincial guarantee?

H-2186 follows

Mr. Houser: I have no information.

Mr. Shibley: None at all?

Mr. Houser: None at all. I did nothing in respect of it.

Mr. Shibley: When you say that; what caused Miss West to write a letter on ~~the~~ October 23?

Mr. Houser: Miss West ^{and} and I haven't her letter here, but you might find it for me.

Mr. Genest: Page 86.

Mr. Shibley: It's part of your own brief actually, on page 86 - 85 actually is the covering letter.

Mr. Houser: Reading from the letter, Miss West is simply saying that she has had a copy of the documents. She has gone over them, and then she raised the question of the participation of the Crown and the right of Ontario.

Mr. Shibley: Right. She had received these documents for review from whom?

Mr. Houser: Mr. Candy had given them to her. I was rather surprised to get the letter because she had taken no part in the drafting of them, and no part in the negotiations.

Mr. Shibley: I see. So regardless of what posture she took in her letter to you, you and Mr. McCallum certainly intended, as per your memoranda of October 20, to take issue with the inclusion of that, unless there was specific instruction, or confirmation from the government that the guarantee would be provided?

Mr. Houser: That is correct.

Mr. Shibley: Now when you raised the withdrawal of that guarantee, I should tell you that Mr. Bradshaw's testimony is that he heard of it on October 23 that the guarantee was not to be forthcoming, and in answer to a question by Mr. Renwick, he said he was surprised to learn that the guarantee was not to be provided.

Mr. Houser: I believe I spoke to him and my recollection would be that it was at a meeting that we were going over in my

(Mr. Houser)

long memorandum.

Mr. Shibley: Yes.

Mr. Houser: Either that or is it a phone call. I spoke to him. I don't know that there was any great surprise evidenced. I don't recall it. He had been aware of it previously.

Mr. Shibley: I see. I must say the import of his evidence, as I understood it, was that he was expecting a guarantee until October 23, but you say

Mr. Houser: I would not agree with that, Mr. Shibley.

Mr. Renwick: Mr. Chairman, may I just interject here.?

Mr. Chairman: Mr. Renwick.

Mr. Renwick: I don't know whether there is anything in it or not, Mr. Houser. Mr. Bradshaw first said that he heard about the withdrawal of the guarantee on the Monday, October 23. Then he corrected himself, and he was acting on the advice of counsel with respect to his privileged position or the privilege of his client. He then stated it was on October 22 that he had heard, which was the Sunday, and he was very precise about that, and that it was in that context that he indicated that he was surprised to hear. Do you know of any other source from which Mr. Bradshaw could have heard that the guarantee was no longer to be provided? In other words, he may have been used to it by the time you discussed this with him.

Mr. Houser: I don't know of any other source. I did not talk to him on the Sunday. It would be the Monday that I would talk to him.

Mr. Renwick: Did Mr. Bradshaw ever indicate that it was anything more than a try-on, to have inserted the guarantee in the documents right from the beginning, or that there was a real expectation on the part of Canada Square that the guarantee was part of the deal?

Mr. Houser: When we first discussed it I gathered that Mr. Bradshaw felt that there might be a provincial government guarantee made available. But after the first discussion in which I said to him I had no such instructions, we weren't going to

(Mr. Houser)

include it, it didn't seem to me that it was more than a try-on to see if they could get it. There was no great consternation evidenced to me when I told him that he couldn't have it.

Mr. Renwick: Thank you, Mr. Houser.

Mr. Shibley: In any event, you didn't intend your draft of September 15 to evidence your agreement that there be any such guarantee?

Mr. Houser: The answer is no.

~~Mr. Shibley: Now the meeting to which you make reference, Mr. Houser, if you look at the minutes on 89.~~

H-2187-1 follows

Sept. 5/73
2:40-2:45pm
C. B.

(Mr. Shibley)

Mr. Shibley: Now, the meeting to which you make reference Mr. Houser, if you look at the dockets on 89, the meeting on October 23rd, ~~and~~ do I take it that that docket and the next one which is Mr. McCallum's, is ~~is~~ a docket of the time expended not only in considering the guarantee but the documents generally, the whole of the documentation referable to the transaction?

Mr. Houser: The answer ~~is~~ ^{is} the whole of the transaction and it was only a momentary discussion of the guarantee. We simply said that since we had no instructions to put it in, it was coming out, and that was it.

Mr. Shibley: May I ask you as, an aside, why was the date of October 18 given the documentation when you were still reviewing them in their detail on October 23?

Mr. Houser: There is no actual answer for that, It is ~~that~~ ^{that} sometime as you prepare documents they get a date put on them and that date stays with them. There was no significance to the date of October 18th.

Mr. Shibley: That date cannot be taken as being necessarily the date on which the documents were settled, executed and delivered?

Mr. Houser: No.

Mr. Shibley: All right.

Mr. Houser: If we were being very formal we might have said dated for the sake of convenience as of October 18th.

Mr. Shibley: In any event, Mr. Houser, the first occasion on which you discussed the deletion of provision as to guarantee, was at the meeting of October 23?

Mr. Houser: No, as I said earlier.

Mr. Shibley: I'm sorry, other than what you've said, in terms of bringing it home to them that it now had to come out because you hadn't a letter.

Mr. Houser: As far as I'm concerned, yes.

Sept. 5/73
2:40-2:45pm
C.B.

Mr. Houser:

Although I think Mr. McCallum may have dealt with it on other occasions.

Mr. Shibley: Then, Mr. Houser, was there any discussion on the 23rd and following as to the ^(direct) ~~lack~~ of the deletion of the guarantee upon the arrangements which Mr. Moog was making for permanent financing?

Mr. Houser: Not to my knowledge.

Mr. Shibley: Nor have you any information as to that?

Mr. Houser: I have no information.

Mr. Shibley: I want to take you forward in the brief of documents in front of you, Mr. Houser, to the docket - well, first of all, to page 99 where the ~~total~~ ^(saw) total docket hours are indicated at the tail-end of handwritten notes as being 205 hours; on page 99.

Mr. Houser: That is correct.

Mr. Shibley: That's the last of a series of handwritten notes of Mr. McCallum ~~which we were~~ for which we were trying to establish a date. I remind you that the total docket hours charged out in your billing was 220 as at December 15. Could you, by relating to the docket hours, ~~it~~ give us some indication as to when these notes would have been made?

Genest:

Mr. Houser: Mr. Shibley, I really don't think that is a fair question.

Shibley:
Mr. Houser: If he can't,

Mr. Genest: The whole matter was put to the author.

Mr. Shibley: Well, if he cannot, well, he's involved here he's got 115 hours. Do you know at what point of time you had 115 hours tied up in this transaction?

Mr. Houser: I can't actually give you the exact date as to that.

Mr. Shibley: No, no just roughly.

Mr. Houser: Well, the account ~~was~~ went out in December,

(Mr. Houser)

December 15, and ~~showed a~~ ^(showed a) total of 220 hours. So it would be sometime earlier ~~than~~ than that because there had been a certain amount of work done early ~~in~~ in December and late in November. This memo probably was made towards the end of November, but I have no actual date for it.

Mr. Shibley: Then I want to take you to page 101 of the brief ~~which is the subject of that day, and it...~~

H 2188 to follow

S

ol

We

te:

ber

(Shibley)

is your docket of that day and it records a telephone conversation with Mr. Millman of London Life re financing. Would you please explain this to the committee?

Mr. Houser: I think perhaps, Mr. Shibley, if I may take a moment before I directly explain it; as the committee are no doubt aware, Mr. McCallum and I have been partners for almost six years. Prior to that time, he had his own office and he and I worked very closely together prior to the time of his coming with me. Some six years ago he came as a partner to our firm. During my association with Mr. McCallum and Mr. McCallum's association with myself, we have been fortunate in handling a considerable number of large development projects in Metropolitan Toronto and other cities.

We have arranged a considerable amount of mortgage financing over that period of time. We know where certain funds are available and under certain circumstances can be obtained. I have always got a great deal of satisfaction out of arranging a satisfactory transaction ~~in~~ for my clients.

I was at a meeting of a board of directors of a company which I am a director of and I spoke to someone associated with the London Life, discussed with them the situation pertaining to the Hydro, without any instructions from the Hydro and without any instructions from Canada Square or their solicitors, to see if they were interested in arranging the financing of this project.

On November 6th, I believe there ^{was} ~~are~~ three phone calls from Millman, although there are only two of them shown in the time memos. I had a phone call from Mr. Millman of London Life and we spent some time discussing the financing of the new Hydro project and at that time I think the rate was quoted at eight and three-quarter per cent. There was no firm commitment of any kind given. Then, the matter was left in abeyance. I mentioned the fact to Mr. Bradshaw and Mr. Moog at a meeting. They evidenced only slight interest because the interest rate was more than they were prepared to assume and I think a rise in interest of one per cent had the effect of increasing the cost of about 30 cents a square foot.

(Mr. Houser)

I discussed the matter, I believe, with Mr. McCallum perhaps with Mr. Candy, casually. I then had a further discussion Mr. Millman as shown by the subsequent memo, endeavouring to get the rate below eight and three-quarter per cent. I could get no commitment for a reduction of that rate below that amount. However there was some indication that it might have been brought slightly below that amount.

I then had a telephone ~~xx~~ call or a discussion with Mr. Bradshaw or Mr. Moog - I think it was Mr. Bradshaw - told them what I had done and he evidenced no interest whatsoever at that time in my financing; said they were not interested - I shouldn't pursue my inquiries, that they would look after their own financing.

I later then telephoned Mr. Millman and explained the situation and the matter was allowed to drop. In doing it, I had two things in mind, perhaps three. Most of the financing we have arranged over the years has been for private developers who had been very wary of borrowing on foreign soil and paying foreign exchange rates. They don't ~~xx~~ want to run the risk. I was concerned with the risk that Hydro was running, was trying to get rid of it; and secondly, in being perfectly frank with you, if I had placed a loan of \$45 million, there would have been a substantial fee in it for the firm ~~and~~ I was interested in it and also a considerable satisfaction for myself to have put together the financing for the project ~~and~~ I was interested in all ^(of) those three without instructions from either my client or Canada Square.

Mr. Shibley: Thank you, Mr. Houser, that's ^{is} very helpful outline. In the course of your communications, therefore, with London Life, was there any discussion of the alternative financing that Canada Square might ~~do~~

(H-2189 to follow)

be attempting?

Mr. Houser: There would be no elaborate discussion. There would be a brief discussion when I was trying to have the interest rate lowered, to say ^{well} they are trying to get American money and they may get a better rate than you have got.¹⁷ But beyond that there was no discussion.

Mr. Shibley: In particular, I take it from your answer there was no effort made to have London Life assist in establishing, so to speak, the credit of Hydro on the transaction as equating with that of the province itself?

Mr. Houser: None. We didn't go into even sufficient details to handle that situation.

Mr. Shibley: Mr. Steadman had said that in a conversation even prior to October 23 that you had raised the possibility of funding their permanent financing with London Life, and that Mr. Moo had indicated that he had no interest therein.

Mr. Houser: I may have raised it. I had done no work on it because the meeting I was at, I believe, was after the 23rd.

Mr. Shibley: Yes, so that, Mr. Houser, I only mention that, I take it therefore that if that is a fact, and I am expecting Mr. Steadman's memory of having raised it even prior to October 23, that if you raised it thereafter it was raised by you as part of the coincidence of being at a meeting with a senior director of London Life?

Mr. Houser: I had a different thought in mind completely, Mr. Shibley.

Mr. Shibley: All right.

Mr. Houser: My thought was that if I could arrange the financing at a satisfactory rate, that I might make this proposal to Hydro that they should go for Canadian financing, and that they should up the rate, the rental rate, sufficient to take into account the difference in the interest, and ~~thereby~~ thereby avoid the risk of the foreign exchange.

Mr. Shibley: I see.

100-6773
 100-2:55
 CA

Mr. Houser: And if I could have said to Hydro, "For seven cents a square foot you can avoid all the risk of foreign exchange," I ~~may~~ ^{may} have made that recommendation to them, to have so, and that was the plan I was working with. I wasn't so concerned with trying to arrange Mr. Moog's financing, as I was in trying to get a better deal for the Hydro and to remove from the Hydro's contract the risk of the foreign exchange.

Mr. Shibley: I understand. That was a risk that was in your thoughts and that Hydro were being required to assume.

Do I take it that you didn't bridge the spread of the rates sufficiently to make that overture to your client?

Mr. Houser: That is correct.

Mr. Shibley: Members of the committee I am through with...

Mr. Genest: Mr. Shibley, I wonder, just to clear up on that last ~~subject~~ ^{subject}, I wonder whether the witness might be asked whether at that time he had received instructions from Hydro as to their lack of concern about the foreign exchange risk?

Mr. Shibley: Would you like to answer that, Mr. Houser?

Mr. Chairman: Do you want Mr. Genest to repeat it?

Mr. Genest: Did he understand it?

Mr. Houser: No, no. I understand it perfectly. I am trying to put it together, Mr. Chairman.

As I worked along through the contract I was being continually told that the risk wasn't as great to Hydro as it would be to a private investor. Nevertheless, I always felt that there was some risk in borrowing money at ^{an} American exchange rate, and ~~if~~ ^{that} I could eliminate that risk without too much cost it would be something worth doing.

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Just a couple of questions. Mr. Houser, the evidence indicates that on November 8, 1972, ~~that~~ Canada Square received the commitment of Prudential. I assume that when they told you not to do anything further about London Life or any other source of financing that they didn't tell you that they had made their arrangements with Prudential, or did they?

Mr. Houser: The answer to that I think would be "No".

Mr. Renwick: That they didn't give you any information.

Mr. Houser: No. I knew they were working with a New York company, because on occasion they couldn't come to my office because they had to go to New York. But I was not given any firm instruction that the financing had been arranged.

Mr. Renwick: What position does Mr. Millman hold in London Life?

Mr. Houser: I think he is the senior mortgage supervisor. Maybe higher than that; I'm not sure.

H-2190-1 follows

Mr. Renwick: And how would you characterize the degree of interest shown by Mr. Millman, and through him, to London Life in the communications about the possibility of London Life financing?

Mr. Houser : I think there was a firm interest.

Mr. Renwick: Do you think it went any further within London Life or do you have any information as to whether it went ~~any~~ further?

Mr. Houser: No, I don't think it went any further, because Mr. Millman was after me to get some information to pass on, and I was not prepared to pass on any information until I had a firm commitment from either Canada Square or the Hydro that such financing would be acceptable.

Mr. Renwick: So you wouldn't have any reason to believe that it would go to the, if there is a top level above Mr. Millman, to the top level in London Life or to any investment committee of its board of directors?

Mr. Houser: I would say it did not go ~~to~~ to the investment committee of the board of directors.

Mr. Renwick: Thank you, Mr. Houser.

Mr. Chairmann: Mr. Glen Hodgson.

Mr. R. G. Hodgson: Did I understand you right, Mr. Houser, that due to your contact with someone associated, that Mr. Millman called you?

Mr. Houser: That is correct.

Mr. R. G. Hodgson: So the message got from the person you were talking to at the other board meeting, to London Life?

Mr. Houser: That's right.

Mr. R. G. Hodgson: And ~~if~~ Mr. Millman called you subsequently?

Mr. Houser: That is correct.

Mr. Chairman: Mr. Shibley?

Mr. Shibley: I wanted to introduce for Mr. Houser --
but before I do so I would like to show something to Mr. Genest,
if I may have two minutes.

Mr. Chairman: Right, Mr. Shibley.

Mr. Genest: It is the first time ⁱⁿ this hearing he has
come to me!

Mr. Chairman: You are winning, Mr. Genest, you are
winning!

Mr. Renwick: While we are waiting, perhaps I could ask
Mr. Houser a question. Would ~~he~~ he have preferred to have
taken Mr. McCallum's place and spent the summer with us here at
these hearings?

Mr. Chairman : How did you arrange to do otherwise?

Mr. Houser: Well, it doesn't always work that way.
There was one summer when I had to stay in the city and Jim
got away.

Mr. Shibley: I have solved my problem.

Mr. Chairman: So he is helping you now, that is a
change too. No, that is an unfair comment!

Mr. Renwick: There is an obvious conspiracy between
Mr. Shibley and Mr. Genest to produce a ^A ~~witewashed~~ report!

Mr. Shibley: It is what you call editing. ^{The reporter} ~~A reporter~~ ...
over there will understand!

~~Mr. Shibley~~ I am sorry, Mr. Houser. I am showing you
what is the first page of a memorandum. The rest of it is
irrelevant to this enquiry. It is ~~is~~ dated September 6, 1972 -
I will wait until the members have their copy of ~~it~~ it.

Mr. Chairman: Is this to be an exhibit?

Mr. Shibley: Yes, please.

Mr. Chairman: Exhibit 228.

Mr. Shibley: ~~Mr. Houser~~ This was a period of time when you
had some responsibility in the matter, and I take this as a memorandum

red (Mr. Shibley)

by ~~Mr. A~~ Mr. McCallum that on the night of Wednesday, the 6th, ^{to be} spoke to Mr. Candy and "discussed the meeting which was ^{in turn} in Houser's office on Thursday, the 7th. It was agreed that they would handle the details and if there were problems I would find out what they were from Houser and I would communicate them to Candy. We would use our best efforts to iron out the kinks as they arose. On ~~Monday~~ Tuesday, the 5th, I had a lengthy meeting with Houser in his office at which we went over all the points that he had noted ~~from~~ from his reading of the papers. Also, on Tuesday, the 5th, telephone conversation with Henry Sissons." That is in brackets. "And the general strategy was set, i.e., if and when problems arose, I would be told about them by him, and ~~Mr. A~~

~~Mr. A would be told about them by him, and Mr. A would be told about them by him, and Mr. A would be told about them by him, and~~



(Tape H-2191 follows)

(Shibley)

Shibley, he
Houser's
id

~~and when problems arose I would be told about them by him and~~
would work them out with Candy and with Moog. He ~~said~~ that being
myself, Mr. Houser, he was not to take a hard line at any time because
it was in Hydro's interest, now that they have made a public declaration
of the deal, to try and work out the ~~proper~~ proper deal and get the
building constructed."

Now, Mr. Houser, I would like your evidence respecting
the instruction, if you like, or advice or direction, that you were
~~receiving~~ receiving at that time, vis-a-vis the negotiations that were
underway with Canada Square.

Mr. Houser: I think perhaps I'll make a comment or two
before I answer.

Mr. Shibley: Surely.

Mr. Houser: As I have explained before, Mr. McCallum and
Rowe I handled a considerable number of large transactions and by large I
mean some of the largest ones in this city. Over the years we have
adopted a certain method of operation. We work together but one of the
two of us is always the lead man on the team. One does the negotiating
and the other does the back-up work. Sometimes I ~~am~~ do the
negotiating, particularly if it is one of my personal clients. If it
is one of McCallum's clients, ~~he~~ he will probably do the negotiating and
I will back him up and do the work in the office.

We have found by doing that that we ~~never~~ get two
conflicts of opinion in public and one of ^{us} always takes a more gentle and
congenial line with the other side than the other.

Mr. Renwick: Just like the police detectives!

Mr. Chairman: Sounds like a minor conspiracy in itself,
doesn't it?

Mr. Houser: ² Always work in a pair

Mr. Houser: I can assure you, gentlemen, it is a
most satisfactory way to work.

Mr. Chairman: Most successful, any way

Mr. Houser: Most successful ~~and~~ on ~~occasions~~ occasions, and I am
saying this quite humbly and Mr. Shibley has some knowledge of it, I have
been known to be a very tough negotiator.

Mr. Shibley: Yes, I know.

Mr. Houser: I am k going to stop here and tell a st

" Mr. Shibley will forgive me, but this is one of the most priceless things that ever happened. We were having a meeting with Mr. Shibley over certain contracts some years ago. All of the names shall remain unknown. And after we were discussing the contract which had been made by a client of mine through his company and which was not being fulfilled in the way originally planned and other arrangements were being made - again, a very substantial contract - Mr. Shibley turned to my client and said to him: "Of course, you have no objection to putting your personal covenant on the document?" And my client turned to Mr. Shibley and said to him: "Mr. Shibley, I gave that to my wife 25 years ago." At that point the discussion about the personal covenant ended. Do you remember that?

Mr. Shibley: Yes.

Mr. Houser: However -- so on this night in question, Jim was telling me that he was going to deal with the Hydro Commission and he was wanting me to work my way along and not to get upset and not to start taking a tough line with the other side. He said, "I'll do ~~xxxxxxxx~~ the negotiating this time and you do the work behind me" and he said to me that I was not to take a hard line with the other side and I didn't. Evidence the leaving in ~~the xxxxxx~~ contract of the part in respect of the Ontario guarantee. If I had been the chief negotiator, I would have crossed that out the first time I saw it, but I wasn't so I left it in ~~and~~ I can tell you that McCallum did the negotiating and his office is down the hall some distance from ~~my~~ mine, and on occasions I could hear the voices in the far corner when they were discussing terms of this contract but I did not do the hard line negotiating.

On one occasion I had to step in because it was getting so hot; I sent McCallum out and took over, but other than that I did not do the hard line negotiating and kept an even stance as I was instructed to do by McCallum on this contract.

That's not unusual.

Lawrence Kead
~~We work~~ that plan on a great many contracts and it has worked out very satisfactorily

3.00 to 3.05 gm

Mr. Chairman: Now that your secrets are revealed, do

Q. Think you will be as successful in the future?

Mr. Houser: I think so.

Mr. Deans: Have you arranged the same sort of format

the committee?

Mr. Shibley: I have no further questions of Mr. Houser.

It has been very helpful to have you.

Mr. Houser: Fine, thanks.

Mr. Chairman: Thank you very much, Mr. Houser.

(H-2192 to follow)

Sep. 6/71
3.05-3.10
V.H.

HANS H. RASMUSSEN, sworn.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Mr. Rasmussen, what firm are you associated with?

Mr. Rasmussen: Hanscomb Roy Associates.

Mr. Shibley: And in what capacity are you employed with that firm? Or associated with the firm?

Mr. Rasmussen: I am an associate partner of the firm and the manager of the Toronto division.

Mr. Shibley: And have you responsibility for appraisal work in connection with M&H Hydro's head office building?

Mr. Rasmussen: Yes, I do.

Mr. Shibley: Would you please tell the committee what your responsibilities in that connection are?

Mr. Rasmussen: We have been hired by Hydro to evaluate the construction costs of their headquarters building.

Mr. Shibley: When were you first retained?

Mr. Rasmussen: In November of 1972.

Mr. Shibley: Did you undertake a review of the specifications that were laid down for the Hydro building and such drawings as were available to you to compile an initial report in that regard?

Mr. Rasmussen: Yes, we have.

Mr. Shibley: When did you complete the compilation of your first report?

Mr. Rasmussen: At the end of April, 1973.

Mr. Shibley: That would be your report of April 25 which is exhibit 202 in these proceedings, which I will have produced to you in a moment. Now in the compilation of this report, had you received your instructions from Mr. Candy as to what was intended to be encompassed by the contract with Canada Square?

Mr. Rasmussen: WE had the outline specifications and the preliminary sketch drawings.

Mr. Shibley: Did you also have the benefit of discussion with Mr. Candy?

Mr. Rasmussen: Yes. Some minor discussions but my arrangement with him was that I would take the documents available and come up with our estimate of the drawings ^{and} the specifications as they were. We would present them to him for his comments.

Mr. Shibley: Did you not have a series of meetings with Mr. Candy to discuss the building ~~at~~ prior to the compilation of your report?

Mr. Rasmussen: No, I did not.

Mr. Shibley: I see. In any event, you compiled what is now exhibit 202, the report of April 25; and did you deliver it on or about that date to Hydro?

Mr. Rasmussen: Yes. It may have been a few days ~~later~~ later.

Mr. Shibley: In looking at that exhibit, you broke out the elements of the structure into 12 specific elements, adding to what is standard, the element of special allowances, and without going into the detail ~~thereof~~ thereof, you came up with a figure ^{of} ~~total~~ \$33,103,000 which is inclusive of a contingency allowance of \$3 million, is that correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: Now, just for the assistance or information of the committee, I would remind the committee that Mr. H. Zwig this morning gave evidence that construction costs were calculated by his firm at \$33 million from which sum he hoped to knock \$3 million off for ^a balance of \$30 million as to construction costs ~~and~~ ^{only} and I would remind the committee that Mr. Tatham, of Y & R Properties, similarly gave a figure of \$30 million for the cost of this building. Now ^(We have) ~~Mr.~~ Mr. Rasmussen's report to the same effect. I take it, ~~that~~ Mr. Rasmussen, that these take-offs were predicated upon information

(A-2193 follows)

(Mr. Shibley)

~~information that was not inclusive of~~
that was not inclusive of subsequent in-put, so to speak, of more precise plans and more precise specifications by Canada Square. Is that correct?

Mr. Rasmussen: Yes, I believe it is correct.

Mr. Shibley: On the other hand, certain elements that are inherent in the structure of a building are very basic and not subject to a great deal of variation.

Mr. Rasmussen: That is correct.

Mr. Shibley: Would you go down with the committee and dealing with your first report, the substructure, and outline to them, the approach you took, and the information you based your calculation upon.

Mr. Rasmussen: Well, we divide any ~~but~~ building up in these same elements, and although we may have very little or no information whatsoever we usually at this stage of the game base our figures on historic data on previous buildings that we have worked on.

For the Hydro building we did have some information, but we had none, for instance, on the structure itself, without it, ~~being~~ explained that it should be a concrete structure.

So when we break out the two items for the structure, one being substructure, one ^{the} superstructure, or as we call it just a structure, ~~we~~ ^{we} in our substructure allowance, allow for anything that is below the so-called slab on grade for the first-floor level. In this case it includes for excavation, I think it includes for caissons, or piles if you like, and ~~it includes~~ ^{it includes} for the ~~and~~ footings to the building itself. The balance of the structure is then

(13322)

located under the superstructure element.

None of this information was available to us at the time. ~~Bill~~ ^{we} were told was that ~~it~~ would be a concrete structure.

Mr. Shibley: I see. Now then, ~~and~~ similarly with respect to the balance of the breakout, you were relying, I take it, on the information then available to come to these calculations.

Mr. Rasmussen: Yes.

Mr. Shibley: Now then, without going into detail with it now, I want to move to what amounts to what we call the second report, which is exhibit 203, and if the clerk could give you that, or has given it to you, ^{it} that's dated May 17, not to be confused with the ultimate...

Mr. Rasmussen: May 17?

Mr. Shibley: May 17. I'd like to know what transpired ~~in~~ in the interim, April 25th, 1973, and May 17, 1973, that brought about the preparation of this document?

Mr. Rasmussen: When we had prepared the April 25 document, ^{we} were trying to reach Mr. Candy to sit down and discuss the details ~~of~~ with him. But due to other activities Mr. Candy was not available.

We finally typed up this document and sent it down to him asking for a meeting, ~~in~~ in which we could sit down and discuss it. We finally had the meeting, I believe it is May 14th or approximately thereabouts, where we discussed some of the details and he corrected us on some of the items that we had in here.

Mr. Shibley: That's in your ~~version~~ ^{version} number one, your April document; he was correcting that?

Mr. Rasmussen: That's right. That led then to our first May 17th presentation.

Mr. Shibley: NOW in that connection, was it then Mr. Candy who ~~brought~~ ^{brought} about, let us say, the changes in terms of the substructure costing, the ~~1C~~ ^{1C} item, from \$611,000 to \$909,000?

Mr. Rasmussen: Indirectly he asked us to ~~go~~ ^{and} have a look at the site, which we did, and we were given some additional information at the site, because this particular work was actually going on at the time.

Mr. Shibley: All right, and you satisfied yourself as to that change?

Mr. Rasmussen: Yes.

Mr. Shibley: All right, with respect to the next item of structure, ^{it} remained the same.

Mr. Rasmussen: That's right.

Mr. Shibley: Then the third item, exterior ^{cladding} cladding, ~~and~~

H 2194 to follow

H-2194-1

Shibley)

~~Mr. Rasmussen: That's right.~~~~Mr. Shibley: And the third item exterior cladding, it~~

remained the same in terms of your discussions with Mr. Candy. Is that right?

Mr. Rasmussen: Correct.

Mr. Shibley: So that version number two - the first May 17 report, having been reviewed with Candy, no change was made to the provision as to exterior cladding on the building. Is that correct?

Mr. Rasmussen: Right.

Mr. Shibley: Then going down the line; interior partitions - there is not enough of a change to discuss there. Similarly with vertical movement, there is slight increase there. Interior finishes however, is a very substantial increase of some ~~three~~ \$3,300,000.

Mr. Rasmussen: That is correct.

Mr. Shibley: Would you please explain what Mr. Candy said to you that caused you to adjust that figure in that manner?

Mr. Rasmussen: Well the major change is two particular items one on the floor finishes, being the carpet, which under the documents were not supposed to be included.

Mr. Shibley: Yes.

Mr. Rasmussen: Mr. Candy - and I have to go back quite a while, to our very first discussion - Mr. Candy's instructions to me at that time ^{was} that he had an arrangement made with Canada Square that if we came up with a figure, indicating that this building as we saw it, was not the value that they had agreed to, Mr. Candy or Hydro had facilities to increase the cost ^{In other words, they} of the building. ^{Add} items to the building to bring it up to the cost that they had agreed to.

Mr. Candy, looking at the figure we had produced originally felt that he had the facility at this moment to add in the carpet, being one of the items he should add in. And so on his instruction he added in the carpet to the cost of the building, although it was

not supposed to be there.

Mr. Shibley: I think if we look at page 6A of the two documents you see whereas that page has \$306,000, the revised, least the first version of the May 17 report is \$1,600,000, and that is substantially carpeting - \$1,300,000 increase on that item alone. Is that correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: Now just before we go on, you've mentioned that Mr. Candy was of the opinion that he could do so. You ~~was~~ have considered the contract, and particularly paragraph 8 of the contract have you not?

Mr. Rasmussen: Yes.

Mr. Shibley: That is the provision that this committee has already reviewed in some depth as to the right of change.

Mr. Rasmussen: Correct.

Mr. Shibley: Now can you comment upon the interpretation that Mr. Candy was placing on that provision with respect to the inclusion, for example, of carpeting?

Mr. Rasmussen: My first interpretation was there ~~was~~ were no facilities to that effect. But I will certainly credit Mr. Candy with being a lot closer to the issue than myself. So when he instructed me that he did have the facilities, I took his word for that.

Mr. Shibley: I see. You did not consider carpeting, as an example, ^{as} something that could be included, and yet acted on his instructions to include it. Then on 6B of these two documents, again, the jump is from \$838,000 to \$2,695,000. ~~What was the~~ increase made on Mr. Candy's insistence.

Mr. Rasmussen: No it was not. Mr. Candy informed me that Canada Square had requested to install this particular ceiling.

Mr. Shibley: Yes. Now in that connection, Mr. Rasmussen, was the calculation you made on the April report based upon the type of ceiling which was specified in the contract?

Mr. Rasmussen: Yes.

Mr. Shibley: There was an explicit specification for a 2 x 4 lay-in ceiling.

Mr. Rasmussen: Correct.

Mr. Shibley: And you costed that at \$780,000.?

Mr. Rasmussen: That's right.

Mr. Shibley: Whereas on May 17, Mr. Candy having advised you of a different type of ceiling going in, this is an integrated accoustic ceiling, the amount is now \$2,575,000.?

H-2195-1 follows

~~(Mr. Shibley)~~

~~Mr. Candy~~

~~Mr. Rasmussen~~

~~Mr. Shibley~~

Mr. Rasmussen: That's correct. I might add here that also includes all the light fixtures.

Q Mr. Shibley: I realize that, and we will go through that later. The point of the matter is that Mr. Candy gave you this instruction. Did he say to you that Canada Square had agreed to this?

Mr. Rasmussen: Yes, it was their ~~request~~ request.

Mr. Shibley: Yes. At their request? ~~And did~~ ^{!!} have regard for the fact that the suspended 2 x 4 lay-in ceiling, which you had costed on April 25 at seven eighty, was specified, was this a change that you considered was the entitlement of Hydro? Or was this a change made with the concurrence of and at the expense of Canada Square, ^{which} ~~which~~ would be something really volunteered by Canada Square?

Mr. Rasmussen: I ^{interpreted} ~~interpreted~~ that as being volunteered by Canada Square although I ~~do~~ think I did mention to ~~XXXXX~~ Ken in passing that ~~he~~ ^{he} had better make sure he wasn't to pay for this later on.

Mr. Shibley: Yes, we have since made sure Mr. Rasmussen, because Mr. Moog has confirmed, I think that there is not to be any extra charge ^{for this item}.

Mr. Rasmussen: Right.

Mr. Shibley: In any event, you did tell Mr. Candy that he had better make sure that it was not to be an extra charge? Is that correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: Because in your view it was clearly beyond the specification in the original contract?

Mr. Rasmussen: Right.

Mr. Finlayson: Well, Mr. Chairman, I am going to take issue with this line of cross-examination. After all,

Mr. Rasmussen:

the arrangement was made between Mr. Moog and Mr. Candy, both of them have stated that they regarded this as being within the intent of the agreement. ~~and~~ to cross-examine this particular witness and have him say that he doesn't think it is within the agreement and therefore it is somewhat that Mr. Moog ~~discussed~~, I think puts an improper perspective on the evidence altogether. I don't know why we are going into this with this witness at all. The other evidence is quite clear. Mr. Moog, at the very outset, told Candy ~~that~~ ^{he} would have to change that ceiling and it wasn't put forward as -- it didn't fit with the curved design and he didn't put it forward as being something gratuitous at all. He just regarded it as part of his obligation to provide a building of the quality he had agreed to.

Mr. Shibley: Mr. Rasmussen, Mr. Chairman, I think it is a proper line of questioning. I must answer through you.

Mr. Chairman: ^(I am) Certainly interested in what Mr. Rasmussen was saying earlier about misunderstanding. ^{at least}, what he regarded as a misunderstanding between Mr. Moog and Mr. Candy as to ^{the} interpretation or the intent of this clause. I certainly think that is relevant.

Mr. Shibley: Mr. Chairman, it goes beyond that. The specification per se, this is one area that is not a grey area; the specifications themselves say that the ceiling is to be a suspended 2 x 4 lay-in tile ceiling -- is that not correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: There is no vagueness about the type of ceiling that was ^{originally} intended when Mr. Moog made his proposal.

Mr. Genest: As I understand it, Mr. Shibley, that the specification also calls for a curved building and the evidence says that that kind of ceiling didn't fit into a curved building. You are into a question of interpretation.

120-3
H.
Mr. Shibley: Yes. And the evidence says also that
Hydro is paying extra for the curved building, Mr. Genest, but
be that as it may.

Mr. Genest: Well, that's a gratuitous statement.

Mr. Shibley: Well, no, it isn't gratuitous. It's
in evidence as part of the submission of Canada Square that
they included in their costing of four ninety-two some 20-odd
cents or some amount of money per square foot per year because
the building was curved.

Mr. Chairman: I think that's right.

Mr. Shibley: In any event, talking about the dif-
~~ference~~ difficulties with the ceiling, this coffered ceiling runs
into the same difficulty; units to ^{be} ~~be~~ manufactured ^{and} installed
are going to be irregular in shape. Is that not so?

Mr. Rasmussen: In order to meet the curve, yes.

Mr. Shibley: Yes. You don't wind up with anything
less ~~than~~ irregular because you are using a coffered ceiling,
isn't that so?

Mr. Rasmussen: Correct.

Mr. Shibley: Now, then, returning to the face page
of these two, the next item is fittings and equipment, there
are some ~~less~~ lesser amounts of increase. I am sorry. There's
not enough to get involved ⁱⁿ ~~in~~ that.

~~Then the services are another item~~

H-2196 follows

(Shibley)

Then the services ~~2~~³ another item that has a \$1 million increase on it. Would you like to explain that, please?

Mr. Rasmussen: Well, we were not able to get very much.

Mr. Genest: What is the item, Mr. Shibley?

Mr. Shibley: Item 8.

Mr. Rasmussen: We were not able to get very much information on the mechanical ^{and} electrical systems from Mr. Candy. He referred us to Canada Square. We subsequently had a meeting with their engineers to get some additional ~~added~~ information. When we put together the April 25 report, we had no information whatsoever on the mechanical ^{and} electrical systems, outside of what was spelled out in the outline specifications. So we had a meeting with Canada Square's engineers which led ~~to~~^{to} the revision of our figures.

Mr. Shibley: Yes. Now, when you say, "led to revisions" would you please tell me - I am taking it that the revisions you are talking about are the automatic temperature controls of a half million dollars, in part.

Mr. Rasmussen: Yes, that is one of them.

Mr. Shibley: That is found on 8-C, is that correct?

Mr. Rasmussen: Right.

Mr. Shibley: And in respect of those controls, would you please explain to the committee what the set up is ^{for} the Hydro building?

Mr. Rasmussen: Well, there is a ~~separate~~ complete set of master controls in the Hydro building itself, but they are also subsequently linked up to the master controls at the Transamerica Building at Yonge and Eglinton, so you do, in effect, have dual ^a control system, but it can be controlled ~~from~~^{from} one building. So that in the time, when the Hydro building reverts back to Hydro,

(Mr. Rasmussen)

the umbilical cord, so to speak, can be severed, and it can function on its own.

Mr. Shibley: I see. Now, when you took off the figures initially, were you not including any allowance for controls at the Hydro site?

Mr. Rasmussen: YEs, we had. ~~We had~~ ^{As} a matter of fact, we had the controls at the Hydro site, but ~~even~~ although we had read the stipulation in the agreement about connecting to the Yonge and Eglinton building we didn't really understand what it meant, and we certainly didn't take it seriously to the extent that it was explained to us afterwards.

Mr. Shibley: But in terms of the increase of \$250,000 from your first report, to \$750,000 in your second - \$500,000 to \$750,000 - does that result from the duality of controls?

Mr. Rasmussen: Not entirely.

Mr. Shibley: IN part *it* does?

Mr. Rasmussen: In part, yes.

Mr. Shibley: I see. Now, turning back again to the *face* pages of this document, I notice also that in ~~version~~ the May 17 version you have struck the word "profit" under item 9; overheads and profit had appeared on April 25th but not in your May 17 document. Would you please explain why you had obliterated the profit element in that *g* figure?

Mr. Rasmussen: Well, we were given the explanation that the construction figures should not entail normal profits to ~~the~~ this type of a building; ~~that~~ ^{that} the profit had been anticipated to be as part of the rental agreement.

Mr. Shibley: So that so far as the type of appraisal you were making, no one ~~it~~ ^{it} was to be included?

Mr. Rasmussen: Right. That is the first explanation we were given.

Mr. Shibley: By Mr. Candy?

Mr. Rasmussen: By Mr. Candy, yes.

Mr. Shibley: Were you given any different interpretation

per?

Mr. Rasmussen: We had a meeting after that.

Mr. Shibley: ~~Mr. Rasmussen~~ When was that?

Mr. Rasmussen: I can't remember the exact date. It must have been early June. We had then took that the profit, which would then take care of their head office expenses, should have been included.

Mr. Shibley: I see. The profit which would take care of their head office expenses? I don't understand that.

~~Mr. Rasmussen: I don't know what you mean.~~

(Tape H-2197 follows)

Mr. Rasmussen: Normally, what we call overhead, are the expenses.

Mr. Shibley: Yes.

Mr. Rasmussen: And the term profit would include their head office expenses as well as a profit margin.

Mr. Shibley: Well, then, you have come along and made one ~~point~~

Mr. Deans: Wait a second. Aren't you going to ask how they assess that?

Mr. Shibley: I think we are going to get to that later because certain claims were made for overhead and ~~and~~

Mr. Deans: I am sorry.

Mr. Shibley: ~~Mr.~~ Mr. Rasmussen has his views on that score. Then their site development has jumped from \$470,000, again by \$900,000 dollars to \$1,325,000.

Mr. Rasmussen: On our preliminary drawings there were nothing but a few lines indicating that's how work would take place at the site, but ~~we~~ ^{we} were then given some pictures, mainly of the model, and some artist's ~~sketches~~ sketches of what they envisage being done, ~~and~~

Mr. Shibley: Yes.

Mr. Rasmussen: ~~At~~ At the podium level. Now, I can certainly see a lot more money being spent than we had originally estimated.

Mr. Shibley: Mr. Rasmussen, even in the first May 17th report, what this really amounts to then is an allowance?

Mr. Rasmussen: It is, yes.

Mr. Shibley: You had nothing really to go on to add another \$900,000 into that item?

Mr. Rasmussen: That's right.

Mr. Shibley: Now, then, you have reduced contingencies from \$3 million to \$2 million.

Mr. Rasmussen: Mainly because we have now been given some more information.

Mr. Shibley: Yes, and with this input from Mr. ~~Deans~~

Shibley)

came up with a \$38 million figure?

Mr. Rasmussen: That's correct.

Mr. Shibley: Now, was that figure discussed with Canada

are?

Mr. Rasmussen: Yes, it was.

Mr. Shibley: And what happened?

Mr. Rasmussen: Well they disagreed violently with some of the items. They disagreed with the figure in general.

Mr. Shibley: Yes?

Mr. Rasmussen: We then had a meeting where both Mr. Moog and Mr. Candy were present.

Mr. Shibley: When was that meeting?

Mr. Rasmussen: Mid-June, approximately mid-June.

Mr. Shibley: Yes?

Mr. Rasmussen: And we then revised our May 17th, which I will have to take the blame for the confusion if there is one because of the same date, but the only thing we agreed to change was to eliminate the carpet from the estimate, together with the sprinklers of the superstructure under the mechanical system.

Mr. Shibley: Yes.

Mr. Rasmussen: Well I didn't at ~~and~~

Mr. Shibley: But the elimination of those two elements as items of cost for Canada Square reduced your figure now back down to \$36 million inclusive of the \$2 million contingency allowance?

Mr. Rasmussen: Right.

Mr. Shibley: And ~~was~~ what was ~~discussed~~ Canada Square ~~position~~ position in respect of the \$36 million figure?

Mr. Rasmussen: Well, they still disagreed.

Mr. Shibley: Yes, they said it was ~~quite~~ too low?

Mr. Rasmussen: Too low, according to their figuring.

Mr. Shibley: Yes, but that was a figure then arrived at by you in conjunction with Mr. Candy and with his assistance as to what was to be included. Is that not so?

Mr. Rasmussen: That's correct.

Mr. Shibley: And that was a figure arrived at after

Mr. Shibley:

an attendance at the site and a certain amount of communication with Canada Square?

Mr. Rasmussen: Yes, that's correct.

Mr. Shibley: All right, now then you are at the position where you have done a May 17 report ^{which} with the deletions that Canada Square said were not for their account, was now down to \$36 million. What happened at the meeting?

Mr. Rasmussen: Now this is where we agreed to disagree.

Mr. Shibley: Yes, would you tell us about that please?

Mr. Rasmussen: Well --

Mr. Shibley: Perhaps you need your version number three in front of you, I don't know. Exhibit 204.

Mr. Rasmussen: The only thing that's different between the original May 17 and the revised one, as I say, is the elimination of the carpet and the sprinklers.

Mr. Shibley: Well, the only thing --

Mr. Rasmussen: There are some minor revisions to the finishes which were ~~added~~ ^{added} out at that meeting, but they really don't affect the price all that much.

Mr. Shibley: You will have to make that clear to the committee, Mr. Rasmussen. Your May 17 report, the first one was \$38 million.

Mr. Rasmussen: Correct.

Mr. Shibley: The carpeting was \$1.3 million.

Mr. Rasmussen: Correct.

Mr. Shibley: And the sprinklers was an extra \$500,000.

Mr. Rasmussen: That's correct.

Mr. Shibley: So you ~~do~~ deduct \$1.8 million from \$38 million and you are down to \$36,200,000. Is that correct?

Mr. Rasmussen: That's correct.

Mr. Shibley: So to get it ~~back~~ up to \$37,500,000, you must have added another \$1.5 million to the ultimate version of the ~~May~~ May 17 report?

~~Mr. Rasmussen: Yes, there are some items that were added to As I say, on the finishes ~~that~~ we were ~~adding~~ out a few items, such as finishes to elevator lobbies, etc.; to the main mall, ~~and~~ also we were given the explanation of the skylights having been increased; ~~and~~ this is being the skylights only to ^{our} actual glass vault.~~

Mr. Shibley: I want to show you what is exhibit 205 in these proceedings. That's the representation, I take it, ^(that) Canada Square was making at the point of time when, having deducted the carpeting ~~and~~ and ~~sprinklers~~ sprinklers, it was back down to \$36,200,00, and then they were trying to ~~the~~ the last paragraph says "We therefore insist that you add to your net cost of \$36.2 million the above additional amount of \$2,790,000 and arrive at a total construction cost of \$39 million."

Mr. Rasmussen: Right.

Mr. Shibley: Now, you didn't accede to that, I gather?

Mr. Rasmussen: No, ^(After having) ~~gone~~ ~~through~~ through this ~~in a~~ subsequently, ~~in~~ pardon me, a previous meeting, we had added in some of these items, not because they were items requested by Carda Square, but, after having had the meeting, we had ~~to~~ agree, ^(that) there could be changes to the finishes mainly.

Mr. Shibley: I want to take you now to ~~the~~ the ultimate version of the May 17th report, that's exhibit 204. Just to be clear on this; this document was put in final form when? What was the actual date ~~of~~ ^{of} the preparation of this ~~document~~ ^{(middle,}

Mr. Rasmussen: Towards the ~~end~~ ^{(middle,} of June. The actual document was put together towards the middle of June.

Sept. 5/73
3:35 - 3:40 pm
C.B.

Mr. Shibley: But when was it made final as to all of its terms?

Mr. Rasmussen: The last revision was probably made the beginning of July.

Mr. Shibley: When?

Mr. Rasmussen: The beginnigg of July.

Mr. Shibley: Yes, and you made revisions by simply substituting sheets in the May 17th report, and leaving the date on it?

Mr. Rasmussen: That's correct.

Mr. Shibley: Now, then, I want to turn with you and direct your particular attention to something that has taken up some time of this committee, namely item 8, in the revised version of the report, that's for mechanical, and ask you to tell the committee what has taken place with respect to the computation of the allowance for the ~~mech~~ mechanical work in this building.

Mr. Rasmussen: You mean how we went through the details in arriving at the figure?

Mr. Shibley: Yes, I take it that in your first calculation, on April 25, you had allowed for mechanical, an allowance of \$5.10 for heating, ventilation and air-conditioning, and ^a further allowance for ~~pl~~ plumbing and drainage of 80 cents. Is that correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: For a total of \$5.90 for plumbing, drainage, heating, ventilating and air-conditioning, ^{Is that} correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: And that you ultimately have made an allowance of \$6.51 in that connection, made up of \$5.62, 70 and 9 cents, Is that correct? The 9 cents being brought up from the 12 cents for mechanical and electrical site services.

Mr. Rasmussen: Yes.

Mr. Shibley: Now, on the other side of the coin, Canada Square has been contending for a larger allowance than for mechanical. Is that not so?

Mr. Rasmussen: Yes, they have.

Mr. Shibley: Would you explain to the committee the

~~_____~~

~~_____~~

H 2199 to follow

10. 6/
100-34
V.H.
(Mr. Shibley)

~~debate~~ that's been carried on in this respect. As you realize every dollar differential here represents \$1,300,000.

Mr. Rasmussen: Yes. At the preliminary stages of our estimate, we had no information to go on whatsoever, so we had made comparisons with a similar building we were working on. At that stage, we arrived at the figure we started to quote, \$5.90 for the internal work. We had meetings with the engineers for Canada Square where they explained to us that we were somewhat light on the controls to the building, for one thing, which having gone over in detail with them we agreed it would be ^aslightly higher cost. The main basis for staying at the figure, at the level we had been at, was that we had been working with the same engineers on a different building where we had their estimate of the same mechanical system, or at least ^asimilar mechanical system.

Mr. Shibley: I want to have produced to you what is exhibit --

Mr. Chairman: I wonder if this might be a good time to take a break?

Mr. Shibley: Yes, thank you, Mr. Chairman.

Mr. Chairman: We will adjourn until five minutes to four.

H-2200 follows

The committee resumed at 4.00 o'clock p.m.

Mr. Chairman: Ladies and Gentlemen, I call the
 order back to order.

Mr. Shibley: Mr. Rasmussen, I have put in front of
 you a letter of Tambllyn Mitchell, dated July 5, 1973, from
 Tambllyn Mitchell to yourself. This document, I might say, was
 made part of an opening statement ~~by~~ one of the statements ~~by~~
 by Mr. Moog, in support of his contention that the mechanical
 allowance should be \$7.50 per square foot, ~~and~~ I am going to
 ask that the clean copy which is in front of you be made the
 next exhibit, Mr. Chairman. I haven't bothered to reproduce
 it, because you all have copies of the document as part of that
 opening statement, but I think it should be now made formally an
 exhibit.

Mr. Chairman: No. 229.

Mr. Shibley: Thank you.

Mr. Renwick: What is this? The opening statement?

Mr. Shibley: The appendix to the opening statement,
 which is the letter of Tambllyn Mitchell dated July 5th, 1973.

Mr. Renwick: Appendix "B" to Mr. Moog's opening statement?

Mr. Shibley: Appendix "B", yes. Now, you started to
 refer to a figure that you had been working on with great precision
 respecting the costing of a mechanical system in another complex, and
 I believe the figure that you were referen^cing was the figure for the
 federal office complex in Ottawa, is that not so?

Mr. Rasmussen: That is correct.

Mr. Shibley: And that is the figure that this report start
 off with, \$5.28?

Mr. Rasmussen: Right.

Mr. Shibley: Now, would you please ~~be~~ -- and do I take it,
 Mr. Rasmussen, that the reason you were giving Mr. Moog an
 argument about his claim for \$7.50 was that you were aware of this
 \$5.28 figure as being a very exact figure for the federal office

(Mr. Shibley)

complex intended for estimating in December of 1972, is that correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: And December 3 of 1972 would be six months later in point of time, than the Hydro building was under way.

Mr. Rasmussen: That is correct.

Mr. Shibley: So that in terms of talking escalation factors this would be a figure which you would, so to speak, de-escalate, or reduce, to come to an appropriate figure for the Canada Square-Hydro project, is that right?

Mr. Rasmussen: Yes, but we would also have to take into consideration that this building is in Ottawa, which is ~~a~~ slightly lesser cost area than Toronto.

Mr. Shibley: I understand that. Now, would you tell us why you viewed this figure to be of such significance to you, in terms of what you were prepared to allow to Canada Square?

Mr. Rasmussen: Well, the base figure of \$5.28 which is referred to here reflects a mechanical system which is fairly identical and it is a fairly similar type of a building.

Mr. Shibley: Starting with the type of building, the building in the federal office complex is large in area?

Mr. Rasmussen: Yes, it is.

Mr. Shibley: It's massive, much like the Hydro building is going to be?

Mr. Rasmussen: Yes, it is.

Mr. Shibley: So you ~~would~~ ~~considered~~ this a more appropriate comparison than, let us say, the TransAmerica building?

Mr. Rasmussen: Yes, I would.

Mr. Shibley: You had earlier received a letter from Tambllyn Mitchell of July 4, attempting a comparison with the TransAmerica building.

Mr. Rasmussen: Yes, I have also had meetings with Canada Square when they indicated that their costs on the TransAmerica

Mr. Rasmussen comparable
building would be ~~possible~~, but, unfortunately, I have no knowledge
of the actual mechanical system; only the drawing.

Mr. Shibley: Yes, I want to stay with this document for
the moment. You said that in your view the system that was to go
into the federal office complex was comparable to what was going
so so into the Hydro building, is that correct?

Mr. Rasmussen: Yes, as a basic system.

Mr. Shibley: And so, even adding something for the
difference in location, Ottawa to Toronto, what ~~rough~~ position
were you taking with Canada Square?

Mr. Rasmussen: I was saying that this would be a fairly
comparable figure, and that as far as we were concerned we would use it as
a base figure.

Mr. Shibley: Now, the differential between even
\$5.50, jumping that figure, and \$7.50, is \$2.00 a ~~per~~ square foot,
~~and~~ in terms of the overall cost of this building, we are talking
\$2,600,000, is that correct?

Mr. Rasmussen: That's correct.

~~We would use that as a base, for a system that we say is~~

(Tape H-2201 follows)

Mr. Shibley: Extra? Now, for a system that you say is comparable, what disturbs me, or what I am concerned about, Mr. Rasmussen, is whereas Mr. Moog tabled this document in support of his contention that the figure of \$7.50 for mechanical was an appropriate figure, I take it from your evidence that you view a materially lower figure to be the appropriate sum. Is that so?

Mr. Rasmussen: Yes, that is so. That is right.

Mr. Shibley: And that you don't go along with the attempt to compound this figure of \$5.28 so as to build it up to a \$7.50 allowance for mechanical. Isn't that so?

Mr. Rasmussen: Yes, that is correct. We have made our own calculations of what these additional items would be worth in our estimate.

Mr. Shibley: And when you made those allowances you came up with the figures in the ultimate version of the May 17 report, being \$5.62 plus 80 cents for plumbing. Is that right?

Mr. Rasmussen: That is right.

Mr. Shibley: So that, to be clear on this ~~is~~ and I don't want to go behind this figure of \$5.28 ~~is~~ I understand, incidentally, that you worked very incisively in the work-up of that figure, that \$5.28 figure?

Mr. Rasmussen: Yes, ~~we~~ have.

Mr. Shibley: And, as a matter of fact, it was a figure of some ~~kind~~ confidentiality?

Mr. Rasmussen: That is correct.

Mr. Shibley: And I take it you were also surprised to see it published by Mr. Moog before this committee?

Mr. Rasmussen: Yes, I was.

Mr. Shibley: I don't want to go behind that figure, but just so this committee is perfectly clear, the federal office complex in Ottawa which was due for commencement of construction in December, 1972 - six months after this project or sequentially...

Mr. Rasmussen: That is not correct.

Mr. Shibley: I'm sorry.

Mr. Rasmussen: It's December, 1973.

Mr. Shibley: 1973. Thank you.

Mr. Rasmussen: Although the estimate was based on December 1972.

Mr. Shibley: Oh, that is what you were telling me. So it is not until December this year - this is to come?

Mr. Rasmussen: That's right.

Mr. Shibley: So in a period projected forward, after very detailed analysis of the cost of that system, and that being a system that you viewed to be comparable ^{to} the equivalent of the system to be incorporated in the Ontario head office building, your estimate of that cost forward to December, 1973, is \$5.28?

Mr. Rasmussen: No, I'm sorry. The estimate is based on December, 1972.

Mr. Shibley: Yes.

Mr. Rasmussen: For the same reason that our estimate on the Hydro building ~~4~~.

Mr. Shibley: I'm sorry.

Mr. Rasmussen: It is the later part of 1972 as well.

Mr. Shibley: Yes.

Mr. Rasmussen: But the building is yet to come; the federal office complex is yet to come. It has not started yet.

Mr. Shibley: I see. All right. In any event, the point I am trying to make with you, Mr. Rasmussen, or want to establish one way or the other with you is that ~~...~~

Mr. Finlayson: I am wondering, Mr. Chairman, if we asked the witness how you can have a detailed analysis of the cost of something which hasn't even come into being yet?

Mr. Shibley: I'd be delighted to have him answer that.

Mr. Rasmussen: Well, we don't work on one building at a time. We have, for several years, used backup data where we have our engineers complete analysis of the project when they are finished. We have broken it down into functional areas, each function representing a certain cost to us. It doesn't necessarily mean that a particular building will be compared to the next building. We will take both the building comparison and the functional comparison, and analyze both aspects of it. So when we are faced with a particular building, like the Hydro building, we will go over

Mr. Rasmussen:

its idiosyncrasies, so to say, and we will compare it with as many similar projects as we have on file.

Mr. Shibley: With respect to the computation of the federal office complex, is that to be a quality ~~building~~

Mr. Rasmussen: That is a good quality building, yes.

Mr. Shibley: And you said the systems were comparable. are now fully ~~of~~ familiar with the system intended for the Hydro building?

Mr. Rasmussen: Yes.

Mr. Shibley: And fully familiar with the system at the federal complex?

Mr. Finlayson: Don't say it is added there; it is contemplated there, too.

Mr. Shibley: Contemplated. ~~Oh~~ Yes, thank you.

Mr. Rasmussen: I may add that I do not do the mechanical engineering at ^{our} ~~their~~ office.

Mr. Shibley: I realize that. Yes.

Mr. Rasmussen: But I am familiar with the systems, yes. We do have our individual engineers looking after the projects.

~~_____~~

H02202-1 follows

Mr. Shibley: Yes. All right. Now then, you mentioned -- or, just while we are still on this, did Mr. Moog present you with a letter from Mr. Cooper, his architect, to himself, dated June 16, 1973 claiming \$1.75 per square foot for royalties being exhibit 210?

Mr. Rasmussen: Yes.

Mr. Shibley: He gave you that letter did he?

Mr. Rasmussen: Yes, he did.

Mr. Shibley: What comments do you make on a claim of some \$2 million-odd for royalty in connection with the mechanical system?

Mr. Rasmussen: I am not all that familiar with royalties or patents. But I would think a figure of that magnitude would buy the patent rather than ~~to~~ buy the royalty!

Mr. Shibley: I see. You also mentioned having an initial discussion with representatives of Canada Square, do you remember that?

Mr. Rasmussen: Yes.

Mr. Shibley: That was at their offices?

Mr. Rasmussen: We had several meetings, both at our offices and their offices, yes.

Mr. Shibley: And do you remember asking for figures at that meeting?

Mr. Rasmussen: What particular figures?

Mr. Shibley: Well, figures that would assist you in making up your appraisal?

Mr. Rasmussen: Yes. At our very first meeting with Canada Square, which was instigated by Mr. Candy, Mr. Candy had told me that I would be given full support in the estimate that we were preparing, that we would have access

Sep. 6, 1941
10-4.15
V.H.

(Mr. Rasmussen)

to Canada Square's preliminary estimate ~~and~~

Mr. Shibley: Yes?

Mr. Rasmussen: ~~for~~ at that time. The meeting took place at Canada Square's office, at which Mr. Moog, Mr. Cooper and Mr. Johnston were present. The meeting didn't last very long because, despite Mr. Moog's apparent willingness to co-operate, he wouldn't give me any figures. ~~But~~ ^{When} there were certain figures disclosed, one of the members of the team would leave the room, look up the figures, and come back and tell me. Finally, I figured this would have to be changed so we ~~terminated~~ ^{terminated} the meeting.

Mr. Shibley: Would you please describe your feelings, as you described them to me?

Mr. Finlayson: Why do we have to have that?
~~terminated~~

Mr. Shibley: Well, I think it is important to evaluate the measure of co-operation that Mr. Moog is affording the appraiser.

Mr. Finlayson: All right then, I think the question is to ask him what took place, not what were your feelings after you left the meeting.

Mr. Shibley: All right. What did you do Mr. Rasmussen?

Mr. Rasmussen: I was disgusted, so I left the meeting because I couldn't get any figures. I called Mr. Candy as soon as I was able to reach him and told him that, and Mr. Candy himself got upset and asked me to come down and see him. When I saw Mr. Candy at that meeting, he called Mr. Moog again and stressed the importance of the co-operation we should have from him. Mr. Moog then agreed to subsequently set up a meeting at our office, ^{at} which these figures ~~was~~ were made available to us.

Mr. Chairman: One of the points that has been put forward by, I believe, Mr. Moog was along the line that this is a team effort and that you choose your contractor on the

basis of good faith and the ability to get along with one another. Now I think this is relative in regard to that, Mr. Finlayson

isn't going
Mr. Finlayson: Well, he also ~~showed~~ *made it clear that he*
to show his costs.

Mr. Chairman: He did that and I agree that is not one of the -- by the terms of the contract, he doesn't have to, but I THINK there is somewhere along the line a spirit of good faith that we are entitled to look to see whether it is there or it is not there.

Mr. Shibley: Mr. Rasmussen, just in terms of the Chairman's comment, did you feel that you were getting the kind of co-operation from the developer at that first meeting to which you felt entitled and ^equired to do your part of the job?

Mr. Rasmussen: No. I did not get that co-operation at the first meeting. But subsequent to Mr. Candy's second phone call to Mr. Moog, I have been given all kinds of co-operation since ~~with the exception of the fact that~~
~~open up the books to us~~

~~Mr. Shibley: I would not want to ask you any more questions in that connection with you?~~

~~Mr. Rasmussen: That's all, yes.~~

H-2203 follows

(Mr. Rasmussen)

with the exception that they will not open up the books to us.

Mr. Shibley: I was just going to ask you, are they persisting in that position with you?

Mr. Rasmussen: They are, yes.

Mr. Shibley: And you do not expect now to ever have access to their books of record, invoices, etc., sub^(u)contracts, to assist you in your appraisal?

Mr. Rasmussen: No, I do not expect to.

Mr. Shibley: With respect to the specifications for the performance of work and supply of material, did you also make requests for ~~the~~ those specifications that had already been ~~settled~~ settled upon by Canada Square?

Mr. Rasmussen: The only specifications we have had are the ones that are detailed in the agreement.

Mr. Shibley: Yes, have you asked for --

Mr. Rasmussen: I have never asked for anything beyond that except for some clarifications.

Mr. Shibley: Yes, are you going to require those?

Mr. Rasmussen: Yes, we will, and I expect to get them.

Mr. Shibley: Yes, have they indicated now that they give them to you?

Mr. Rasmussen: Yes, they have.

Mr. Genest: Mr. Shibley, ~~Mr. Rasmussen~~ may not be up to date. I am told by Mr. Candy that a large number of drawings ~~we~~ have been sent in the last couple of weeks, is it?

Mr. Finlayson: ^{About two weeks ago.} Mechanical, all mechanical, ^{including the} ~~including the~~

Mr. Shibley: We are talking about specifications now.

Mr. Genest: Well specifications and drawings.

Mr. Shibley: On the other side of the coin, Mr.

Rasmussen, although Mr. Moog and his ~~own~~ people will not give you figures requested by you in some areas, have they given you figures which they considered your estimate too low in the sense of coming forward with evidence of increased costs?

Mr. Rasmussen: Yes, they have.

Mr. Shibley: For ~~small~~ example, did they do that with

with respect to Pilkington?

Mr. Rasmussen: Yes, they did, on the skylights that were just talking on --

Mr. Shibley: So they give you the supporting data when it increases the contract but none other?

Mr. Rasmussen: That is expected.

Mr. Finlayson: Mr. Chairman, perhaps Mr. Shibley should clarify that. My understanding is that he was only given the quantities on the Pilkington contract, that he was not given the actual price paid. Now, could we clarify that with the witness?

Mr. Shibley: I would be delighted to, Mr. Finlayson.

Q By letter dated June 11, 1973, on the letterhead of Pilkington Contract Division to Canada Square, particulars were provided of the items in question including the costs. Were they not, Mr. Rasmussen?

Mr. Rasmussen: Yes, they were.

Mr. Shibley: And Mr. Moog was very quick to provide you with a copy of that particular sub^{ot's}contract~~or's~~ pricing?

Mr. Rasmussen: Yes.

Mr. Shibley: So that it wasn't just a matter of the specification being provided. The actual costs were provided to you?

Mr. Rasmussen: That's correct.

Mr. Shibley: And this ~~was~~ was one of the items where by providing you with the ~~contractor's~~ sub^{ot's}contractor's pricing it would increase the allowance you were prepared to make?

Mr. Rasmussen: That's correct.

Mr. Shibley: I will have that made an exhibit, Mr. Chairman.

Mr. Chairman: Exhibit 230.

Mr. Shibley: Now, I want to refer you to exhibit 207, Mr. Rasmussen, which is the letter of July 4, 1973. ~~Now~~ I take this to be an effort --

Mr. Finlayson: Mr. Chairman, I don't want to interrupt my friend and perhaps if he is going to call Mr. Johnston he will be asking these questions, but I am told that far from being what my friend

Mr. Finlayson)

describes it, this is a preliminary estimate put forward by Pilkington with respect to certain barrel units.

Mr. Shibley: That's what we are talking about. On the appendix to it, you will see a figure of some 18-thousand-odd dollars which was the figure relied upon to make an allowance of \$20,000 in that facet of the breakdown. Is that not right, Mr. Rasmussen?

Mr. Rasmussen: Yes, it is.

Mr. Shibley: And that was a very substantial increase in respect of that ~~the~~ item, was it not?

Mr. Rasmussen: That's correct. The preliminary estimate was around \$3,000 to \$4,000.

Mr. Finlayson: Yes, but this is not a contract price. It says quite clearly: "We have also prepared some preliminary budget figures showing the range of prices for the various ~~alternatives~~ alternatives, and hopefully these will be of assistance to you in finalizing your design."

Mr. Shibley: Well, ~~the~~ I will let the witness answer, Mr. Chairman. Mr. Rasmussen, in what circumstances and for what purpose was the Pilkington letter provided to you by Mr. Moog?

Mr. Rasmussen: When we discussed the detail of the estimates, they disagreed with my figure that I had allowed for the skylights.

Mr. Shibley: Yes, where is that figure in your estimates?

~~Mr. Rasmussen: It is on the April 25 estimates.~~
~~Mr. Shibley: Yes.~~
~~Mr. Rasmussen: Yes.~~

ington--Rasmussen--

~~_____~~

Mr. Rasmussen: It's on the April 25 estimate, page 3A.

Mr. Shibley: 3A, yes.

Mr. Rasmussen: You'll notice an item marked "skylights," We have 25 numbers at \$3,000 for a total of \$75,000.

Mr. Shibley: Yes.

Mr. Rasmussen: On our May 17, 801, on the same page, you will now notice that the skylights have changed from 18 in numbers to \$20,000 a piece.

Mr. Shibley: Yes, for a total of...

Mr. Rasmussen: \$360,000.

Mr. Shibley: Yes, that's \$285,000 of an increase.

Mr. Rasmussen: Correct, which was based on that particular letter.

Mr. Shibley: I don't know whether my ~~my~~ friend is satisfied yet, Mr. Chairman. But I take it that the ^eletter was produced-- what part of that letter did you rely upon to make that abse to \$300,000 increase?

Mr. Rasmussen: Well, the total letter really, ~~the~~ but ~~the~~ the pricing mainly.

Mr. Finlayson: My point, Mr. Chairman, this is not a production of our costs. We didn't sign a contract with these people to produce this at this price. It doesn't reflect our costs at all. There's nothing inconsistent with producing ^{this and} ~~the~~ Mr. Moog's position.

Mr. Shibley: I think my friend is missing the point, Mr. Chairman. The whole point of the questioning in this area is to indicate that whereas when Mr. Rasmussen has made an allowance which Mr. Moog can show to be too low by the production

(Mr. Shibley)

of any kind of documentation from subcontractors he produces it,

Whereas in respect of any other figures, he's not prepared to produce any figures.

Mr. Finlayson: This isn't a subcontract. We have no contract with these people.

Mr. Shibley: Is Pilkington going to be the subcontractor for the supply of those vaults?

Mr. Rasmussen: I don't know.

Mr. Shibley: Pardon.

Mr. Finlayson: Well, you can ask Mr. Johnston, but my understanding is they aren't. Anyhow we don't have a contract.

Mr. Shibley: Was this document presented ^{to} you in support of the increase ~~in~~ the allowance in your appraisal?

Mr. Rasmussen: Yes, it was.

Mr. Shibley: As though Pilkington were going to be the supplier?

Mr. Rasmussen: Not necessarily. But that this was the type of quality they were talking about.

Mr. Chairman: I think the point that Mr. Finlayson is making ^{is} in doing this, this is not producing a contract, it is producing some other type of evidence. Is that the point you are making?

Mr. Finlayson: That's right.

Mr. Shibley: I really don't care about that point, Mr. Chairman. The point that I'm trying to make is that when it suits Mr. Moog's purpose, he produces evidence of increased costs.

A member: What do you expect him to do?

Mr. Finlayson: This is not our costs. B

Mr. Chairman: But he's not being inconsistent, I suppose, in producing part of the contract price. This is other evidence. Now, another ~~case~~ under similar circumstances, if this had

3
Mr. Chairman)

been a fixed contract price he had, whether he would have produced it or not, I don't know.

Mr. Shibley: Well, Mr. Rasmussen will no doubt now have regard for the fact that the evidence upon which he was induced to add \$300,000 to this evaluation should not be taken as final because Pilkington~~is~~ may not be the supplier ~~and~~ and the costs may not be as indicated in that document.

Mr. Finlayson: And it was never represented to them that they would be ~~a~~ the contractor or that these would be the prices at which the contract was to be signed.

Mr. Shibley: Well, Mr. Rasmussen, may I ask you about that? Did Mr. Moog indicate to you that the pricing would be in accord with Pilkington's letter?

Mr. Finlayson: That isn't the question that I put ⁱⁿ ~~to~~ the submission that I just made, Mr. Shibley.

Mr. Shibley: I asked Mr. Rasmussen a question.

Mr. Finlayson: You asked him a question, but you did it in order to destroy what I said, and if you want to put my proposition to the witness I have no objection. But don't put your proposition to him and say it is mine.

Mr. Shibley: I'm asking the witness, was the Pilkington letter put to you to support the increase of \$285,000 respecting that item?

Mr. Rasmussen: To answer that question you have to realize that all these figures are preliminary figures.

Mr. Shibley: I realize that.

Mr. Rasmussen: And as such they are subject to change as soon as the final drawings and specifications have been developed.

Mr. Walker: ~~They~~ They are allowances, aren't they?

Mr. Rasmussen: They are allowances, and as such we

Sept. 6/73

4:20-4:25 pm

C.B.

(P. Rasmussen)

accept any support for change to our allowances that looks reasonable to us.

Mr. Shibley: And was the Pilkington....

Mr. Rasmussen: And it was presented in that fact.

Mr. Shibley: Yes.

Mr. Chairman: Now do you want to put your question, Mr. ~~Genest~~ Finlayson?

Mr. Genest: I'm very concerned, Mr. Chairman, that the direction which this examination is taking. It seems to be a fight between Mr. Finlayson and Mr. Shibley, and ~~Mr. Shibley~~ Mr. Shibley making use of this witness to throw stones at Mr. Moog. It hasn't been brought out yet, I think, that this professional man, who is a professional and a very experienced one, the terms of his instructions from Hydro are to use his own independent judgement. The way

H 2205 to follow

Mr. Genest)

~~the questions are being put to this witness,~~
~~a picture is being painted of his, sort of, taking Mr. Moog's~~
 prices, and that is not the case at all. He is to exercise
 his own independent judgement.....

Mr. Chairman: I didn't get that....

Mr. Genest: And I wish we would get a little more of
~~this~~ this witness's opinion of what this building is going to cost,
 rather than use the cost reports that Hydro is going to rely on
 as the stick with which to beat Mr. Moog.

Mr. Chairman: I didn't get the idea, Mr. Genest, that
 Mr. Rasmussen was taking for any means, Mr. Moog's prices. This
 document, I gather, was put in to show that he would listen to
 reason, if Mr. Moog ~~had~~ some good reason ~~for showing the~~ price should be
 higher than he would listen to it, and I think the point that
 Mr. Shibley is trying to make is, does it work in reverse as well?
 However, I want to come back to Mr. Finlayson. I didn't want
 to cut you off from putting the ~~question~~ question, if you wanted
 a question put directly. You suggested that Mr. Shibley was
 not putting your question to the witness.

Mr. Finlayson: Yes, well, Mr. Chairman, the question
 that I just wanted to put directly to the witness, was it
 represented to you, Mr. Rasmussen, that there had been a contract
 executed with Pilkington for the prices ~~set~~ ^{\$} out in Exhibit 230?

Mr. Rasmussen: Definitely not.

Mr. Finlayson: Thank you.

Mr. Genest: I'm sorry to upset you, Mr. Shibley,
 but I feel that we are just not getting the proper use of this witness.

Mr. Shibley: I don't really know what you mean by that,
 Mr. Genest, but I think that if the line of questioning was more
 carefully followed, you would have noted that it was a line of

Sept. 6/73
4.25-4.30p.m.
B.A.

(Mr. Shibley)

questioning wherein Mr. Rasmussen had said that he ~~was~~ couldn't get the cost figures from Mr. Moog. At the first meeting he walked out ~~in~~ in disgust because of the way that the meeting was conducted.

Mr. Finlayson: He never said that, he never said that.

Mr. Shibley: He did say that.

Mr. Finlayson: He said he walked out.

Mr. Shibley: I'm sorry, Mr. Chairman, but I am sure that the witness said that he walked out in disgust. Did you not say that, Mr. Rasmussen?

Mr. Rasmussen: Yes, I did.

Mr. Shibley: Yes. And then ~~he~~ I asked the witness about the production of information that would induce him to increase his prices or appraisal, and Mr. Finlayson said, and I am doing this review for the benefit of Mr. Genest, "Well, show us some instance of it," and that is why the Pilkington letter was produced.

Mr. Finlayson: And you happened to have 50 copies in your hand.

Mr. Shibley: I happen to have copies of a lot ~~of~~ of documents.

Mr. Genest: Oh, come on fellows, stop fighting.

Mr. Shibley: Well, you made your contribution, Mr. Genest.

Mr. R. G. Hodgson: I am concerned about this examination because this is ~~an~~ ^{really an} examination into the public responsibility, here and I think that we have to have this story for consideration as a total, and I don't really appreciate the interjections of the solicitors at this point in time.

Mr. Chairman: Well, I want to be fair to everybody, and I think the committee is trying to be fair, but as I indicated earlier, I think this evidence is important. One of the ~~and~~ and I repeat myself that one of the points ~~has~~ has been put forward is that there must be co-operation and good faith. Now, I am not

Chairman)

This indicates that
~~being that there isn't co-operation and good faith,~~ but I certainly think it is a type of evidence that bears on that point and I think that is relevant to our examination of the selection of Canada Square.

Mr. Shibley: Mr. Rasmussen, there was an earlier effort to elevate your thinking as to the value of the mechanical system, being a letter dated July 4, 1973, ~~from~~ Tamblyn Mitchell, which is Exhibit 207. Is that not correct?

Mr. Rasmussen: Yes.

Mr. Shibley: Have you got that letter in front of you?

Mr. Rasmussen: Yes, I have.

Mr. Shibley: And in that letter, Tamblyn Mitchell

-- would you produce the copy?

Mr. Chairman: I think he is getting it.

Mr. Shibley: Oh, you have your own there, have you?

Mr. Rasmussen: Yes, I have.

Mr. Shibley: That was an attempt predicated upon a comparison with the Trans^a America building, is that correct?

Mr. Rasmussen: That is correct.

Mr. Shibley: Did you accept that comparison?

Mr. Rasmussen: No.

Mr. Shibley: Why not?

Mr. Rasmussen: I know nothing about the Trans^a America building. ~~Subsequently, I can't really say I can use that for a basis for anything~~

(Tape H-2206 follows)

Sept. 6/73
4.30 to 4.35 PM
DT

(Mr. Rasmussen)

Mr. Shibley: Yes.

Mr. Rasmussen: And subsequently I ~~can't~~ can't really say that I can use that for a basis for anything that we are working on.

Mr. Shibley: I notice that in this letter they work to a computation of some \$7.85. Did you accept that?

Mr. Rasmussen: No.

Mr. Shibley: And this is the exhibit with notations on the tail page of page 4 as to ~~what~~ why you don't agree with it, is that correct?

Mr. Rasmussen: The notations are ^{by} an associate of mine. ~~I~~ I had read the letter --

Mr. Shibley: Yes.

Mr. Rasmussen: It didn't make sense to me but just to make sure, I passed it on to one of my associates.

Mr. Shibley: Yes.

Mr. Rasmussen: He happened to be out of town the next day so he just left me the letter with his notes on it.

Mr. Shibley: Yes, and what does he say in his notes?

Mr. Rasmussen: Well, they more or less confirm my own thinking.

Mr. Shibley: Yes.

Mr. Rasmussen: First of all, he is questioning whether the TransAmerica is a fair comparison as far as gross floor area, volume and assigned population.

Mr. Shibley: And for those reasons do you consider it an improper comparison?

Mr. Rasmussen: Yes, I do.

Mr. Shibley: Yes.

Mr. Rasmussen: It is not the same type of a building although it has the same function.

Mr. Shibley: Yes, and then the second point that's raised is whether the escalation is valid, the basis for it.

Mr. Rasmussen: That's right.

Mr. Shibley: Using a factor of 22.8 per cent. You

Shibley:

agree with that?

Mr. Rasmussen: No, we don't. We have our own

allowance for the same periods which is somewhat around 16 or 18 per cent.

Mr. Shibley: And then the third point is something;

"Air chambers; royalty fee cannot be brought into discussion."

What has that got to do with it?

Mr. Rasmussen: Well, it is based on the figures we

have previously discussed.

Mr. Shibley: That's this letter of June 26, exhibit

210, where Mr. Moog was claiming

Mr. Rasmussen: A royalty.

Mr. Shibley: Over \$2 million royalty. Is that correct?

Mr. Rasmussen: That's right.

Mr. Shibley: Incidentally, even if royalty was payable,

what would be an appropriate allowance for royalty?

Mr. Rasmussen: I really don't know.

Mr. Shibley: I see. OK. Then the next item is

"Changes during construction of 202 may be invalid for comparison."

That's the changes between item 2 on the face page, is that correct?

Mr. Rasmussen: That's right.

Mr. Shibley: So you weren't prepared to take that into the overall cost?

Mr. Rasmussen: Definitely not. It is pretty well recognized in the industry that changes that are done after the contract is signed normally carry a higher mark-up than the contract itself.

Mr. Shibley: And then your partner makes a further general comment and I want you to deal with that. Would you read that out to me?

Mr. Rasmussen: I am sorry. Which item are you on?

Mr. Shibley: General.

Mr. Rasmussen: Item five?

Mr. Shibley: Yes.

Mr. Rasmussen: "I think this is an attempt to suck us into agreeing on Canada Square price."

Mr. Shibley: Yes.

Mr. Rasmussen: And ^{it} just say 'be careful'.

Mr. Shibley: Now, why would he make that kind of a general comment? What's your information as to that?

Mr. Rasmussen: Well, it is an attempt on their part to get us to agree to their figure.

Mr. Shibley: Is there any background that would ~~xx~~ make your partner adopt that mental posture?

Mr. Rasmussen: Just general attitude. Not on this particular case but it is not something that we are unaware of.

Mr. Renwick: Mr. ~~Chairman~~ Chairman, could I see the writing on that page?

Mr. Rasmussen: Well, he is saying that we should use different buildings for comparisons that we have in our own file.

Mr. Renwick: ^{It says} 'Bad comparison'. Is that what it is?

Mr. Rasmussen: No, it says -- you mean, the last line? It says HRA comparison. He is using the Bow Valley, the Pacific Centre and the Capital Plaza as comparisons.

Mr. Renwick: Oh, thank you.

Mr. Chairman: Mr. Rasmussen, you make these estimates as you go along and I presume you will be continuing to do that?

Mr. Rasmussen: Yes, we will.

Mr. Chairman: What if the final estimates come out very low or very high? When I say that, when you add them all up at the end of the project --

Mr. Rasmussen: Right.

Mr. Chairman: -- That doesn't mean you still go by these?

Mr. Rasmussen: No, a final estimate is our estimate. The others will ~~just~~ ^{be} be preliminary.

~~Mr. Chairman: Well, my understanding of this evaluation that we are all saying to get to --~~

(H-2207 to follow)

~~CONFIDENTIAL~~
~~as one estimate, and others will then be just preliminary.~~
Mr. Chairman: Well, my understanding of this evaluation that we are all trying to get to ^{is} you are trying to get into close to actual costs here?

Mr. Rasmussen: Yes, we are

Mr. Chairman: But certainly the relative ~~m~~ value of this building has to be taken into consideration. IN other words, these preliminary estimates could be out a great deal from the final evaluation?

Mr. Rasmussen: ~~Definitely~~ ^{Definitely}. Definitely, they could be. As I said before, all these figures are basic allowances and as soon as we have been given final drawings and specifications, we will revise them if necessary.

Mr. Shibley: Those revisions could be up or down?

Mr. Rasmussen: They could be either way, yes.

Mr. Shibley: So, really, you are only speculating when you make an allowance or it's a calculated guess?

Mr. Rasmussen: It's a calculated guess.

Mr. Shibley: But the basic figures, though, ^{take} I would like to ~~take~~ you back to your first report. You got a very base price of \$30 million established. There is hardly any room for fluctuation from that as a price in terms of going down below that? Is that not so?

Mr. Rasmussen: Oh, I wouldn't say that.

Mr. Shibley: You might go below?

Mr. Rasmussen: It's certainly a possibility, but not for this particular building.

Mr. Shibley: Yes. Your expectations ^I I see. It's with respect to these ancillary items for which allowances are set up in your evaluation that price may more likely go up or down. Is that so?

Mr. Rasmussen: Yes. Even on the basic items, we are in the process right now of doing our first check on this.

100-40000
V.H.

Mr. Shibley: Yes?

Mr. Rasmussen: And the only thing that we can ^{really} come up with a good check on is the ~~base~~ basis structure.

Mr. Shibley: Yes.

Mr. Rasmussen: Now, our preliminary investigation ^{approximately five} indicated to us that we are ~~approximately~~ per cent too low on the reinforcing steel as far as quantities are concerned.

Mr. Shibley: Right.

Mr. Rasmussen: That has to be compensated for ^{now}.

Mr. Shibley: I don't know whether we are on topic or whether we can get involved with you on this but you are an appraiser of sorts and you're familiar with the employment of the phrase "appraised value" within the contract?

Mr. Rasmussen: Yes.

Mr. Shibley: Can you assist us ~~any~~

Mr. Genest: Mr. Chairman, he's not an "appraiser of sorts" = ^{He's} a quantity surveyor, which is two different kinds of animals. Before we get opinions, let's make sure of his qualifications.

Mr. Shibley: What is your function? What do you hold yourself out as?

Mr. Rasmussen: Quantity surveyor. If you are talking about appraised value of a finished building, we are not appraisers as such.

Mr. Shibley: Do you contribute to the appraisal of buildings?

Mr. Rasmussen: We may.

~~XXXXXXXXXXXXXXXXXXXX~~

Mr. Shibley: In what way?

Mr. Rasmussen: By estimating the ^{re-}production value.

Mr. Shibley: I see. And is that your instruction respecting the Hydro building?

Mr. Rasmussen: No, that's - well, you may call it the ~~re-~~ reproduction value but that is to report true construction costs to the best of our ability.

Mr. Shibley: To Hydro?

Mr. Rasmussen: Yes.

Mr. Chairman: That's the point I am making. The figure you produce may not be the appraised value?

Mr. Rasmussen: That is correct.

Mr. Chairman: Now, it is your firm though that is going to make the appraised value?

Mr. Genest: No. No. It's Chaffe, MacKenzie.

Mr. Chairman: All right. But you will be putting in an appraised value for Hydro, is that it?

Mr. Rasmussen: No.

Mr. Genest: No.

Mr. Rasmussen: We are talking reproduction costs or estimated construction costs.

Mr. Renwick: I understood -- oh, I don't know, I suppose there is nothing in this but semantics for our purposes. I understood Mr. McCallum to say that the appraised value was the architects' fees, cost of interim financing and reproduction costs. My question to Mr. Rasmussen is whether or not the ~~Genest~~ appraiser who might be selected would, in turn, ask you to give ~~you~~ for a quantity surveying firm, the reproduction costs with respect to some element of something to be called appraised value.


Mr. Rasmussen: We would have to get Hydro's approval but -- to pass on the information, yes.

Mr. Renwick: A quantity surveyor would play that role for an appraiser in some circumstance?

Mr. Rasmussen: Yes.

Mr. Renwick: Could you perhaps help me -- perhaps I missed this and if I did, I will pick it up in the evidence but what exactly -- is this a normal role

H-2208 follows



Sept. 6/73

4:40 - 4:45 pm

C.B.

(Mr. Renwick)

~~For your company to play? The job that you're doing for Hydro?~~

Mr. Rasmussen: Yes it is part of our function, it is a normal role if you like.

Mr. Chairman: But you are employed by Hydro are you not?

Mr. Rasmussen: Yes we are.

Mr. Genest: I don't know if the committee is lost, *but*

Mr. Chairman: I'm lost off this point.

Mr. Genest: One of the purposes of hiring Hanscomb Roy is to make sure, as construction ^{goes along,} to keep an independent check to see that there is ~~some~~ \$34 going into this ~~building~~ building, or if there is less ^{that} we are going to get the proper credit, to see what is going on. To ~~be~~ assist Mr. Candy in our function.

Mr. Renwick: No I understand that.

Mr. Chairman: Well I have been wrong in my understanding.

Mr. Genest: I thought the Chairman, with respect sir, had perhaps forgotten that.

Mr. Chairman: Yes, I'm admitting that I was wrong on that. I'm admitting that.

Mr. Renwick: Now I may have lost the very vital question.

Mr. Chairman: Mr. Shibley has the same complaints to make from time. Start again.

Mr. Renwick: I'll try to ~~phrase~~ phrase it this way. If there were a provision in the contract between ~~Canada~~ Canada Square and Hydro providing for audited costs upon the completion of the work, would your role be a duplication or ~~was~~ would you be retained in that event? Or let me put it another way, is the retention by Hydro of your firm an additional cost to Hydro for putting up this building because there is no provision for ~~audited~~ auditing of the

Mr. Renwick)

building with Canada Square?

Mr. Rasmussen: There is no provision for auditing.

Mr. Renwick: So to that extent this is an additional

cost to Hydro of the building, and if there were an audited cost provision in the contract there would be no need for your firm to be hired for this purpose?

Mr. Rasmussen: We could have done the same role at the end of the job, yes.

Mr. W. Hodgson: Mr. Chairman, I don't ^{think} Mr. Rasmussen's job is at all for that. It is purely a job to see that the quality goes into the building and what kind of quality goes into the building.

Mr. Rasmussen: Yes.

Mr. W. Hodgson: There is going to be ~~per~~

Mr. Rasmussen: There is a very definite distinction

between the role we serve now and the one that you are mentioning as being an audit after the fact. We could perform either.

Mr. Renwick: I understand you could perform but would it be necessary for Hydro to retain your firm for this purpose if there were an audited cost provision at the end?

Mr. Rasmussen: The purpose that we serve now is to at all times keep Hydro informed ^{as} to the actual value of the building, ^A the way it is being constructed, ^{so} that if there is provision for increasing or decreasing cost that they have ample time to do so.

Mr. Renwick: Well in a very simple way let me try once again what is of concern to me. Let me assume for the moment that the contract between Hydro and Canada Square provided for the disclosure of ~~the~~ cost by Canada Square. Would it be then normal for Hydro to retain your firm for this purpose?

Mr. W. Hodgson: ~~It is~~ necessary, not normal.

Sept. 6/73
4:40-4:45 pm
C.B.

Mr. Rasmussen: No ~~it~~.

Mr. Renwick: Or, as my colleague says, would it be necessary? I think he's saying no.

Mr. Rasmussen: Under the circumstances the way the contract is written I think it is necessary.

Mr. Renwick: I'm not trying to drive you into a black and white position. But the way the contract is drawn,

Mr. Rasmussen: The way the contract is drawn up,

Mr. Renwick: Your role is necessary. If the contract were drawn to provide for costs disclosure, would it still be advisable for Hydro to have retained your firm to carry out the ongoing quantity survey work which you are now doing?

Mr. Rasmussen: If there ^{were} ~~was~~ facilities for an audit of the books it would come after the fact, and as such it would be too late to do something about it, if Hydro wanted to change the design in any way of the building. What we are doing now, as I say, is to keep the Hydro abreast of what's going on. We can tell them today what the building, or at least what we estimate the ~~building~~ building is worth three years from now or two years from now when it is finished.

If we say that the building is worth what it is supposed to cost, well that's fine. ~~If we say it costs less~~

~~it gives Hydro the opportunity~~

H 2209 to follow

(Mr. Rasmussen)

...with, what it is supposed to cost, well then that is fine. If we say it costs less, it gives Hydro the opportunity to add a few things that may not have been spelled out in the agreement. Or on the other hand, if we tell them they are too high ^{and} they will be faced with an extra charge at the end of the building, they have ample time to cut something out.

Mr. Renwick: Within the limits of the contract.

Mr. Rasmussen: Within the limits of the contract. Right.

Mr. W. Hodgson: But there would be no way of anyone telling the quality that went into the building by looking at invoices. No way

Mr. Rasmussen: Not by just looking at invoices.

Mr. W. Hodgson: Well invoices, or even having ^{an audited} statement; there would be no way of telling the quality that went into the building until you ^{had} somebody on site checking.

Mr. Rasmussen: Yes, I agree with you. Although what you are talking about, an audit, if you are talking about just strictly an audit of figures they wouldn't tell you anything.

Mr. W. Hodgson: Nothing.

Mr. Chairman: Mr. Genest, can you help? I am think I am straightened now..

Mr. Allan: Mr. Chairman, before you get into it any further I wonder if I could ask a question.

I am very sorry to have missed some of this evidence, but Mr. Genest made a statement, and it seems when we get talking about the final building, we are always in a haze as to whether the cost of the building enters into it or not. And I ~~thought~~ understood Mr. Genest to indicate that it did, and I don't think it does.

Mr. Genest: It is a factor. You can't say that cost isn't a factor.

Mr. Allan: It is a factor that you may use,

Mr. Genest: It is not ^{the} controlling one.

Mr. Allan: That you may use in trying to come to a settlement with Canada Square.

Mr. Genest: Mr. Allan, if Canada Square get a strike that is a two year strike. let's be absurd for a minute...

Mr. Allan: But that has nothing to do ~~it~~ with it.

Mr. Genest: No, but that is a cost. It is a cost that isn't reflected in the value.

Mr. Allan: Well, I don't think ~~it~~ ~~concerns~~ Hydro whether there is a strike or whether there isn't, in

Mr. Genest: But it's a cost: Using ~~your figures~~

Mr. Allan: But you are using the word "cost" in an entirely different connotation; that is, that when you come to decide whether this building, whether you pay the rent that has been determined, or whether you pay less or not, from my point of view the work that Mr. Rasmussen is doing is only going to be one of the tools that you may use in endeavouring to come to a settlement. But the agreement very definitely says that is is the appraised value of the building. Which Mr. Rasmussen said isn't in his line of work.

One question I would like to ask you, though. If you were asked for the replacement value of this building, do you use the figures that arise from the cost of the building, or do you anticipate what a like building would cost if you began to erect it at that time having regard to the inflation that would probably apply?

Mr. Rasmussen: If you are talking about a replacement cost of this particular building, we would use the same figures that we had arrived at at the end of the building, and we would escalate it to a time that you anticipate starting the contract.

Mr. Allan: That was the ~~thing~~ ~~thing~~ I was trying establish yesterday. You know, that isn't much of a figure to use to determine rent by.

Mr. Genest:
~~xxxxxxxxxxxx~~ Mr. Allan, I'm sorry, I think there is a real misapprehension here.

Mr. Allan: I think there is a real misunderstanding, let's say that.

Mr. Genest: No, you see, our contention is that it is the cost of that building standing in place in 1975.

Mr. Allan: Well, then, it isn't the replacement cost.

Mr. Genest: Yes, but it is historical. It is the historical cost of having that building erected as it stands in 1975.

Mr. Allan: Yes, but yesterday, when we were talking about what appraised value meant, the opinion was expressed by someone that it was the replacement value of the building; that is what it was ~~worth~~ worth.

Mr. Walker: ~~It~~ ^{It} was historical ~~cost~~ ^{cost}, I believe ~~was~~ ^{that}

Mr. Genest: Because if you start the building in 1975 you are not going to have it until 1978.

Mr. Allan: I realize that. But if I was going to express an opinion now, with very great respect, as you legal people do,

Mr. Genest: We mean it!

Mr. Allan: I would say that the wording that is going to be used to determine ~~the~~ ^{the} value of this building, I would have my doubts as to ~~whether it was~~ whether it was the most appropriate wording that could have been chosen.

Mr. Chairman: You may have come to your conclusion before all the evidence is in Mr. Allan.

~~xxxxxx~~

H-2210-1 follows

50-455

Mr. Allan: Well I ---

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: Mr. chairman, I want to just ask you before this witness leaves, ~~that~~ I wonder if he could give us an outline or an analysis of what quality really means to him, because I think we have got hung-up on what quality means ~~at~~ at different times and I would like to hear his explanation of what quality means in his profession. I want to ask him a couple of other questions: ~~about~~ I understand one of your duties is on-site day-to-day work activity inspection?

Mr. Rasmussen: No, that is not correct. It is not on a day-to-day basis, it is almost when called upon to do so. We will make periodic inspections but not on a day-to-day basis. There is not sufficient work going on at the ^{work} site to warrant us to coming there on a day-to-day basis.

Mr. R.G. Hodgson: Well, can I pose this question to you? Say you see a very obvious corner-cutting activity, would you report that or would that be part of your responsibility?

Mr. Rasmussen: Yes, we would. We may not report it as such but we would reflect it in our prices.

Mr. R.G. Hodgson: Right. That's the point I wanted to get. Thank you.

Mr. Chairman: I would like to just come back to Mr. Genest for a minute. Hanscomb Roy are employed by you, isn't that correct? When I say "by you", I am referring to Hydro?

Mr. Genest: That's correct.

Mr. Chairman: Now, what purpose do you put the final report of Hanscomb Roy to in determining the appraised value? Any purpose at all?

Mr. Genest: Yes. We say in effect, is it as we are concerned, the value of that building as used in the contracts is going to be ^{what} Hanscomb Roy estimate it to be, ~~and~~ ^{to} which we will add a reasonable figure for interim financing and architects fees.

Mr. Chairman: So that becomes Hydro's position?

Mr. Genest: That's Hydro's position.

Mr. Chairman: But Hanscomb Roy are not the ones who determine the appraised value?

Mr. Genest: No. But we are going to say to Chaffe, MacKenzie ^{the} here's the best evidence."

Mr. Renwick: Contractor's profit?

Mr. Genest: Well, his figures, yes, his figures now include a contractor's profit. A reasonable contractor's profit.

Mr. Chairman: Well, I wasn't as wrong then as I thought.

Mr. Genest: It didn't in the first May 17 but it does in the second May 17, *does it not?*

Mr. Shibley: No, it doesn't. I think you had better clear that up, Mr. Rasmussen.

Mr. Rasmussen: Yes ...

Mr. Genest: It says "profit"

Mr. Rasmussen: ... the profit portion, as I mentioned before, we break an item out called "overhead and profit." The overhead is strictly site expenses and running expenses of the job including insurance, permits, what-have-you. When it comes to the item "profit", it will have to include the contractor's head office expenses. Every contractor will have to have an office to operate from and those expenses are not chargeable directly to any given job. As such, they would be included in this profit margin. Now, when I was told originally to eliminate the word "profit", I inadvertently then omitted the same item, and I reported ~~as~~ as such that there should be an allowance made for that. We have subsequently done so, making an

NO. 5/73
 100-4.55
 W.H.

(Mr. Rasmussen)
 allowance for ^{the} contractors' head office & expenses, but as a
 clean-cut margin ^{or} profit for this project, we have not
 included it.

Mr. Shibley: I would just like to take that up
 with you. In your ultimate report, you've allowed \$3,135,000...

Mr. Rasmussen: That's correct.

Mr. Shibley: ... under that heading, ^{Now} it's been ...

Mr. Genest: You say ["]ultimate report["]?

Mr. Shibley: Well, May ...

Mr. Genest: The current one.

Mr. Shibley: Gees! You are having a bad afternoon!

In the last of the series of three reports that you have com-
 piled to date, Mr. Rasmussen, you have allowed \$3,135,000
 under that heading, is that correct?

Mr. Rasmussen: That's right. It's detailed on
 page 9.

Mr. Shibley: Yes. Now then, if that is for -- ^{we}
^{had} have some evidence, I might say; I think Mr. McCallum said
 on checking with people in the industry ^{that he acts for} ~~the expenses~~ etc., a
 factor of three per cent for overhead and a factor of three
 per cent for profit were factors given to

H-2211 follows

Sept. 6/73

4:55- 5 pm

C.B.

(Mr. Shibley)

~~three per cent for overhead~~ and a factor of three per cent for profit were factors given to him. Would that accord with your own understanding of allowances for those two headings?

Mr. Rasmussen: Sorry, did you say three per cent overhead?

Mr. Shibley: Three per cent.

Mr. Rasmussen: No, that would not correspond.

Mr. Shibley: What would you say would be appropriate?

Mr. Rasmussen: I would say it would be more like six per cent.

Mr. Shibley: For each of those?

Mr. Rasmussen: No, for the overhead itself.

Mr. Shibley: Six per cent for overhead?

Mr. Rasmussen: That's right.

Mr. Shibley: And how much for profit?

Mr. Rasmussen: That depends on whether you want the job or not. But ~~for~~ I would say it would vary somewhere ~~around~~ ^{around} four per cent, out of which 30 to 50 per cent of that would be for his Head office expenses.

Mr. Shibley: ~~I~~ see.

Mr. Renwick: That would tie back into what Mr. McCallum was saying.

Mr. Shibley: Exactly, yes, that does tie-back in. When you gave this \$3,135 million allowance you are talking about overhead, site overhead, site accommodation, that sort of thing. Is that right?

Mr. Rasmussen: Yes, that's right.

Mr. Shibley: And it's not inclusive of a profit?

Mr. Rasmussen: No.

Mr. Shibley: I want to ask you about ~~that~~.

Mr. Renwick: Could I just ask ~~you~~.

Mr. Shibley: Yes.

Sept. 5/73
4:55 - 5 pm
C.B.

Mr. Renwick: Mr. Chairman, have we got the terms of the retainer of Hanscomb Roy by Hydro amongst our exhibits?

Mr. Shibley: Not yet.

Mr. Renwick: What I'm curious about is ⁽¹⁵⁾ this an ongoing ~~retainer~~ ^{can} retainer over the whole period of ~~construction~~ ^{construction} ~~work~~ ^{work}?

Mr. Rasmussen: Yes it is.

Mr. Renwick: ~~and~~ and has a fee been determined for it?

Mr. Shibley: Thank you, Mr. Renwick, for reminding me to ask that. Would you outline the ~~financial~~ ^{financial} ~~and other~~ ^{and other} arrangements you have?

Mr. Rasmussen: Our retainer, basically, consists of two points. The first point being our preliminary estimate to arrive at a starting point, and the second point being an ongoing updating of that preliminary estimate until the completion of the project, ~~and we~~ ^{and we} are to issue no less than quarterly reports on the current costs.

Mr. Shibley: On what fee basis are you doing your work?

Mr. Rasmussen: Total, money-wise?

Mr. Shibley: Yes.

Mr. Rasmussen: Our fee for the preliminary work was \$25,000. Our fee for the ongoing ~~of~~ reports are \$12,000.

Mr. Genest: That's a \$1,000 per report.

Mr. Rasmussen: That's \$1,000 per report.

Mr. Renwick: What does that make the total?

Mr. Finlayson: \$35,000.

Mr. Genest: \$37,000.

Mr. Rasmussen: Anywhere from \$35,000 to \$39,000 depending on how many reports we issue.

Mr. Allan: It's more than that all together.

Mr. Rasmussen: That's all.

Mr. Genest: From the day of this hearing.

Mr. Allan: No, you said \$25,00 for the original one.

Mr. Rasmussen: That's right.

Mr. Allan: And \$12,00 for each one made quarterly.

Mr. Rasmussen: No, not \$12,000. \$1,000 per report.

Mr. Chairman: They figure on three years. Do you know if Hydro employs ^a clerk of the works as well?

Mr. Rasmussen: Yes, they do.

M. r. Genest: We have a full-time man on the site Mr. Chairman.

Mr. Chairman: So these fees ^{of} ~~Hydro~~ the clerk of the works and your fees ~~||~~ would be outside the contracts, of course?

Mr. Rasmussen: That's correct.

Mr. Shibley: I'm going to produce the ~~the~~ documentation in that respect. I haven't got it reproduced for all ~~members~~ members, but perhaps we might make it the next exhibit, Mr. Chairman. It is a set of documents evidencing the arrangement between Hanscomb Roy and Hydro. Exhibit number ~~—~~

Mr. Chairman: 231.

Mr. Shibley: I don't think we need go beyond what you've already ~~&~~ told us, Mr. Rasmussen. I want to ask you about some further specific items in your reports. One is the increase of the allowance for site development of \$855,00 in the ultimate report. You've already indicated that these are allowances only.

Mr. Rasmussen: Yes, sir.

Mr. Shibley: And must await the actual performance of the work before a final figure can be given.

Mr. Rasmussen: That's right.

Mr. Shibley: Then in your May 17 revised version report you have added an item 13, "finish to auditorium of \$175,000" that had not been in your earlier reports. Can you tell us about that?

H 2212 to follow

(Mr. Shibley)

~~... that had not been ...~~
~~... as ...~~

Mr. Rasmussen: In the agreement, we found a clause saying that the auditorium would be finished at the expense of Ontario Hydro. When we scrutinized the estimate from Canada Square and how they arrived at their final figure, we found that the finished auditorium was included in that figure. So we have since added it to our figures as being part of the Canada Square costs.

Mr. Shibley: Now, on the other side of the picture, were you alert to the circumstance that the specification as to lighting had been altered by Mr. Candy, by letter in September of 1972, from 150 to 100 candle power?

Mr. Rasmussen: I don't know if we were made aware of the preliminary one. We have always worked to the latter one.

Mr. Shibley: To which one?

Mr. Rasmussen: The 110.

Mr. Shibley: The 110. So that these figures are based on the 110 candle power?

Mr. Rasmussen: Yes, they are.

Mr. Allan: 125.

Mr. Shibley: Well, whatever it is. These figures are based on what is actually going in.

Mr. Rasmussen: Yes, they are.

Mr. Shibley: Now, I am not going to take you through the whole exercise of how this extra cost for the ceiling works out, but I take it that although the extra cost for the ceiling is \$1.5 million, part of that is because the electrical fixtures are included?

Mr. Rasmussen: That's right.

Mr. Shibley: On the other hand, because of the type of ceiling involved, the servicing for that type of installation is increased as well, in an amount equal, more or less, to the cost of the fixtures. Is that right? I want to get through this without going through a maze of explanations but if you could

Shibley)
st explain it to the committee. I think in the overall result am I not correct that the change in this ceiling adds to the overall cost of something close to \$2 million?

Mr. Rasmussen: Not necessarily in the way you are putting it. There is considerable increase in the electrical cost ~~was~~ over our preliminary estimate to our final estimate here.

Mr. Shibley: Yes.

Mr. Rasmussen: Some of that is based on the changes to the ceilings and some of that was based on misinterpretation on our part as to the requirements.

Mr. Shibley: What I think the committee is interested in knowing is what in the overall, bearing in mind that you have the fixtures included and thereby reduce the lighting costs but the services are added in, what in the overall does the change in the ceiling amount to?

Mr. Rasmussen: I do believe I gave you some figures.

Mr Shibley: Yes, you did.

Mr. Rasmussen: I can't remember them. Its somewhere around a \$ million and half.

Mr. Shibley: Yes. In the overall?

Mr. Rasmussen: In the overall.

Mr. Shibley: One and half million dollars?

Mr. Rasmussen: That's right.

Mr. Shibley: Mr. Chairman, I gave a quasi-commitment ~~to be~~ to be through by five o'clock if possible and unless there is further questioning of the witness by members of the committee, I am not ~~going~~ ^{going} to pursue this further.

Mr. Chairman: I think we are ready to carry on to the point of finishing with this witness.

Mr. Shibley: I really don't see that that is going to add very much. Mr. Rasmussen, your reports as tabled and as before you

H-2213-1

~~Mr. Shibley: I really don't see that it is going to add~~
~~much. Mr. Rasmussen, your reports as tabled and as before you~~
 much set out your estimates to date. Is that correct?

Mr. Rasmussen: That's correct.

Mr. Shibley: Have you done any further reports since the reports that have been produced to me?

Mr. Rasmussen: No, we are in process of making our first interim report now.

Mr. Shibley: When ~~is~~ might that be available?

Mr. Rasmussen: Within this month.

Mr. Genest: *We might still be here.*

Mr. Shibley: All right, have you anything you want to add?

[Oh, no you don't.]
Mr. Rasmussen: No.

Mr. Chairman: Mr. Genest...

Mr. Genest: I have a couple of questions that I would like put to the witness.

Mr. Chairman: Put them through me, if you will, sir.

Mr. Genest: May the witness be asked whether in his considered professional opinion, unaffected by the representations of others, it is his view that the estimated cost of this building is \$37,499,000?

Mr. Chairman: I have just asked you that question.

Mr. Rasmussen: These figures that are before you are ^{our} figures, and I wouldn't have been here testifying today if I didn't believe that they were correct.

Mr. Genest: And to make it clear, is it correct to say that they do not include any amount for interim financing or architects' and consultants' fees?

Mr. Rasmussen: That is correct. It is strictly construction costs.

Mr. Genest: And I suppose ^{as} ~~is~~ a matter of arithmetic, if we added a figure of \$4 million for interim financing and architects' fees at 8 per cent, we would get a building worth ⁷ over \$44 million?

Mr. Chairman: I don't know whether ^{I financing} I am not so sure you want to comment on the ~~building~~ ^{do you?}

Mr. Rasmussen: I would prefer not to answer that.

Mr. Genest: Another question, if I may ask be put to the witness. There is an item of \$2 million for contingencies. I would like the witness asked if in his opinion at this stage of the estimating procedure that constitutes a real item which has to enter into calculations?

Mr. Rasmussen: Yes, very much so. As I explained to you a little while ago we are now in the process of going through the structural estimate again. We have indications that the reinforcing steel has⁵ been underestimated by us by approximately five per cent. We will make that adjustment to the cost of the structure, but we will balance it out against the contingencies. And that is an ongoing process as far as we are concerned. That final figure will not change until we have used up that \$2 million of contingencies. So it is a very real figure to us.

Mr. Chairman: Any other members have any questions? Thank you very much, Mr. Rasmussen.

Mr. R.G. Hodgson: I wanted to ask him if he would explain what he considers quality in a building?

Mr. Chairman: Oh, I'm sorry. Would you repeat the question?

Mr. R.G. Hodgson: I wonder if he would explain briefly what things he considers are quality in a building? You don't have to explain it all, I think certain features and things.

Mr. Rasmussen: It is a little difficult to pick out a point. I have read reports from this hearing with very much interest. And there have been some statements made that certainly would be hard to argue. On the other hand, I think, for instance, the statement by Mr. Tatham saying he could have produced a building for \$15 million less, I would question that. I don't think he could produce this building for \$15 million less. But he could probably produce a building for \$15 million less. I wouldn't argue that point at all. But to me that is a question of quality, what you consider quality, and what Hydro would consider quality. I would say that there is probably the possibility of cutting the cost of this particular building by five per cent, if you want to go in for, should I say, bargain basement items. But if you want a building that is going to represent value to Ontario Hydro 30 years from now, then you have to aim for an entirely different quality of material going

(Mr. Rasmussen)

into the building. And I think—it is my professional opinion—I think they are going in the right direction.

Mr. R.G. Hodgson: Lasting quality^Y so that Hydro would have a real asset at the end of 30 years?

Mr. Rasmussen: That's correct.

Mr. R.G. Hodgson: And you consider that they are going in the right direction to obtain that?

Mr. Rasmussen: Yes, I do.

Mr. R.G. Hodgson: Thank you, that is the answer I wanted to get.

~~Mr. Chairman: Thank you, Mr. Rasmussen.~~

H-2214-1 follows

~~Mr. Chairman: Thank you again, Mr. Rasmussen, for your help here today. Gentlemen, we will stand adjourned until 10 o'clock on Monday morning and I would ask you all, as many of you as possible, to be prepared to sit all evenings next week. Mr. Shibley is preparing his list of witnesses so that he if he doesn't get through those he plans to get through that day, the idea is we will sit that night to do them.~~

Mr. Renwick: Mr. Chairman, I won't be able to sit on Wednesday.

Mr. Chairman: Wednesday night -- well I realize that and some have not been here and Mr. Shibley has your note of what day you will not be here and as long as we have a quorum I think we will continue to sit. Well, thank you all. Have a good weekend.

The committee adjourned at 5.11 o'clock, p.m.

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
223	2190-2	Docket re Hydro - September 6, 1972 - by J. F. McCallum.
229	2200-1	Letter - July 5, 1973 - from Tamblyn Mitchell and Partners Ltd. Hanscomb Roy Associates.
230	2203-2	Letter - June 11, 1973 - from Pilkington Contract Division, Pilkington Glass Ltd. to Canada Square Corporation Ltd. re Ontario Hydro barrel vaults.
231	XXXXX 2211-3	Proposal by Hanscomb Roy Associates re Ontario Hydro head office building.

Free members:

J.N. Allan
J.E. Bulbrook
I. Deane
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

Solicitor, Harries, Houser, Brown
and McCallum :

Elmore Houser, QC

Associate partner, Hanscomb Roy Associates:

Hans H. Rasmussen

